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THE POWER AND AUTHORITY
OF
SCHOOL OFFICERS AND TEACHERS

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THE POWER AND AUTHORITY
OF
SCHOOL OFFICERS AND TEACHERS

1885 77

IN THE MANAGEMENT AND GOVERNMENT OF
PUBLIC SCHOOLS AND OVER PUPILS OUT OF SCHOOL

AS DETERMINED BY THE
COURTS OF THE SEVERAL STATES

BY
A MEMBER OF THE MASSACHUSETTS BAR

NEW YORK
HARPER & BROTHERS, FRANKLIN SQUARE
1885

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PREFACE.

THIS collection of decisions, bearing upon the powers and authority of school officers and teachers in the management and government of public schools, is the result of a careful examination of reported cases in the several states. The work was first undertaken to enable me, as a school officer, to answer, with some show of authority, the questions constantly presented. Its publication has been advised and urged by many directly interested in school work, and by a large number of teachers eminent in their profession. The need of such a book has been long felt and acknowledged. Without commenting upon the form or substance of other publications relating to the law of schools, it is sufficient to say that this book, in plan and scope, is unlike all others, and certainly embodies more recent law than any other.

My plan has been to fully state the facts upon which each case arose and was determined, and the *opinion* of the court, not the *substance of the decision*. The cases relating to the same subject matter

have been grouped, and reported in the order of date, with cross references and annotations.

In a number of states the decision of all questions arising in the administration of schools is left to the school officers, with provisions for appeal from town or subordinate officials to those of the county, and thence to the highest school officials of the state. In some states the final decisions are published. In making up this collection of cases I have not resorted to the decisions thus made, but have taken those rendered by courts. In the reports of cases decided by school officials the statement of facts and the decision are usually very meagre and unsatisfactory, while the opinion of a court defines the principles governing the case. Again, the tribunals thus created within the school system follow and depend, in a large measure, upon the law as announced by courts.

I have added at the close of the book, in appendices, abstracts of the laws of the states relating to the supervision of schools, and the suspension, expulsion, and punishment of pupils, and other matters.

THE COMPILER.

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reserving herein the rights and powers of teachers, school officers in the management of schools, determined by the courts of last resort of the states of the Union, we assume, at the outset, the school officers—committee, visitors, directors, or however designated by statute—have been legally chosen; that the teachers have been worthy and well qualified, and have received certificates of approval and election from the source; that the school taxes have been levied; that the person having such duty toward a boy to open and sweep the school-build the fire; that the scholars have and the teacher is ready to call them to the study of teaching.

of teacher having no certificate, see p. 100.

POWER AND AUTHORITY
OF
SCHOOL OFFICERS AND TEACHERS.

IN defining herein the rights and powers of teachers and school officers in the management of schools, as determined by the courts of last resort of the several states of the Union, we assume, at the outset, that the school officers—committee, visitors, trustees, directors, or however designated by statute—have been legally chosen; that the teachers have been found worthy and well qualified, and have received certificates of approval and election from the proper source; * that the school taxes have been legally assessed; that the person having such duty has employed a boy to open and sweep the school-room and build the fire; that the scholars have arrived, and the teacher is ready to call them to order.

* For authority of teacher having no certificate, see p. 138.

By starting from this point we know better where we are, and escape a great number of conflicting decisions which arose in the judicial interpretation of statutes enacted in the early days of school legislation.

GENERAL POWERS OF SCHOOL OFFICERS.

A general power of charge and supervision of schools includes the power to make all reasonable rules and regulations for the discipline, government, and management of the schools. (5 Cush. [Mass.] 198; 8 Cush. [Mass.] 160; 12 All. [Mass.] 127; 105 Mass. 476; 63 Ill. 353.)

(For power as given by law in different states, *see* Appendix A.)

WHAT IS A REASONABLE RULE

is a question of law to be determined by the courts, or by officers designated by law to pass upon questions arising in the administration of the school laws. (63 Ill. 353; 48 Vt. 476, 477.) The Iowa Supreme Court makes a general definition as follows: "Any rule of the school, not subversive of the rights of the children or parents, or in conflict with humanity and the precepts of divine law, which tends to advance the object of the law in establishing public schools, must be considered reasonable and proper." (31 Iowa, 565.)

RULE AS TO TARDINESS AND ABSENCE.

Iowa, 1871.—*Bendick v. Babcock*, }
 Chandler v. Babcock, } 31 Iowa, 562.

The board of directors and teachers in a district in Iowa adopted the following rules, among others: "Any pupil who is absent six half days in any consecutive four weeks, and two times tardy, shall be counted as one absence, unless detained by sickness or other unavoidable cause, and shall be suspended from the schools until the end of the term, or until reinstated by the superintendent or board." "Teachers may require absence and tardiness to be certified to by parent or guardian in writing, or personally, or by special messenger. All lessons lost on account of absence may be made up at the discretion of the teacher."

Two cases arising under this rule were passed upon by the Supreme Court in 1871. In the first, a boy was absent and tardy, and was suspended. The teacher notified the boy's father, and informed him that his boy could return if proper excuse were rendered, and assurance given that the acts would not be repeated. The father replied that he kept the boy at home to work, and for that reason he was absent and tardy; that he could give no assurance as to the future, and claimed the right to keep his boy at home at any time for the above purpose, and, notwithstanding the above rule, to send him to school.

In the second case a girl was suspended for being absent. Her parents represented that she was kept from school to be taken upon a visit with them; that they were poor, and unable to leave their children at home when they went visiting, and had to take her with them.

The suspended pupils brought suit against the directors and superintendent for damages, and asked the court to restrain the directors from enforcing the rule. It was claimed that the rule first quoted was unreasonable, oppressive, and unjust. The court held otherwise, and decided it to be reasonable and proper, and in the course of the opinion say:

“The object of public schools, as established by our laws, is to secure education to the children of the state. The intention of the law is, not that the children shall, at certain times or on certain days, be simply gathered together, but that, when assembled, they shall be instructed. Their progress in learning is the grand object of the law. . . . It requires but little experience in the instruction of children and youth to convince any one that the only means which will assure progress in their studies is to secure their attendance; the application of the powers of their minds to the studies in which they are instructed. . . . But this cannot be done if they are at school one day and at home the next; if a recitation is omitted or a lesson left unlearned at the whim or convenience of parents. . . . The

rule requiring prompt and constant attendance is for the good of the pupil, and to secure the very objects the law had in view in establishing public schools. It is, therefore, reasonable and proper. . . .

“Tardiness—that is, arriving late—is a direct injury to the whole school. The confusion of hurrying to seats, gathering together of books, etc., by tardy ones, at a time when all should be at study, cannot fail to greatly impede the progress of those who are regular and prompt in attendance. The rule requiring prompt and regular attendance is demanded for the good of the whole school. While it may be admitted that absence and tardiness are acts committed out of school hours, yet, as their effects and consequences operate upon the school—the pupils when assembled for instruction—they are therefore subject to control by rules for the government of the schools. . . . The rule in question, as we have shown, operates directly upon the order of the school; upon the pupils when assembled for instruction. It promotes efficiency to the school, and secures the progress of the pupils in their studies. It is therefore a rule for the *government of the school*, and must be regarded as proper and reasonable, and within the authority of the school officers to prescribe and enforce.

“It is argued that the rule interferes with parental authority, inasmuch as it deprives the parent of his right to the services and society of the child

at times when he may require them. . . . If he would have him make proper advances in school, he must not distract his attention and slacken his interest by interruptions for a day or two in a week, or an hour or so in a day, for the little advantage that he may derive from his labor during such times. Neither has the parent the right to interfere with the order of the school, or the progress of the pupils, by sending his own child at times and in a condition that will, as we have seen, prove an annoyance and hinderance to others. . . .

“Again, it is said that the rule visits upon the child punishment for the parent’s offence. That is, the child is kept from school through the fault of the parent, and is punished for the act of the parent in detaining him. If the good of the children were to be considered only, there would be force in this argument; but it is completely answered by the consideration that the parent’s act is an injury to the whole school. He makes the child, in the exercise of his authority, a source of annoyance and absolute injury to all the other pupils of the school. This he cannot do. The child, through no fault of his own or of his parents, may be afflicted with a contagious disease; yet, as the good of other pupils demanded it, he may be for that reason forbidden attendance at the school (*Spear v. Cummings*, 23 Pick. 225). So, if, by the exercise of parental authority, the child is made to act in such a manner

as to interfere with the progress of his fellow-pupils, it is the duty of those having charge of the school to remove the evil by dismissing the pupil causing it. The good of the whole school cannot be sacrificed for the advantage of one pupil who has an unreasonable father.

“It is urged as an objection to the rules in question that poor parents who require at certain times of the day, as the morning hours, or during the whole of school-days, the services of their children to aid in earning their support, will be prohibited sending them to the public schools. But this application of the rules is foreign to their spirit, and it cannot be presumed that they will be unjustly and wantonly enforced in cases not in their spirit. The tenth rule provides that absence and tardiness, unless from sickness or *other unavoidable causes*, shall be punished by suspension; and the eleventh rule provides that the parents may be required to certify the cause of absence and tardiness. Now we cannot believe that a school board or school teacher within our state will not accept as an unavoidable cause of absence or delay in reaching school the fact that the child's services, at such times, were demanded for its own support or that of its parent. In such cases the school boards and teachers will be bound to permit inconveniences and annoyances to other pupils, which we have above pointed out, for the sake of such unfortunate ones, upon whom want has en-

forced the necessity of labor during school hours. No such case as this is made by the records before us.

"In the first case the son was detained from school to do some work in preparing 'shrubbery for winter,' and his tardiness resulted from the fact that he had 'two cows to take care of,' and was required 'to do the marketing for the family.' These facts do not indicate a condition in life that requires the labor of a lad either for his own support or for that of his parents.

"In the other case the daughter was kept from school to visit with her parents. A family that can afford to visit may well keep their children at school, and if this can only be done by the parents depriving themselves of the pleasures of visiting, it is not too great a sacrifice to secure the great benefits of education to their offspring."

The foregoing views, it is believed, are sustained by the following cases: *Sherman v. Charlestown*, 8 Cush. 160; *Donahoe v. Richards*, 38 Me. 379; *Landers v. Seaver*, 32 Vt. 114; *Guernsey v. Pitkin*, 32 Vt. 224; *Spiller v. Woburn*, 12 All. 127.*

Illinois, 1872.—*Thompson v. Beaver*, 63 Ill. 356.

Directors of a district in Illinois made a rule that the school-house doors should be barred against tardy children. In an action to determine certain

* See p. 10. (48 Vt. 444.)

powers of township trustees, the power of school directors was considered, as bearing upon this rule.

The Supreme Court said:

"The directors undoubtedly have the power to make and cause to be enforced all reasonable rules and regulations for the government of schools in their respective districts. What are reasonable rules is a question of law, and we do not hesitate to declare that a rule that would bar the doors of the school-house against little children who had come from so great a distance (a mile and a half) in the cold winter, for no other reason than that they were a few minutes tardy, is unreasonable, and therefore unlawful. In its practical operation it amounts to little less than wanton cruelty."

Massachusetts, 1874.—*Russell v. Lynnfield*, 116 Mass. 366.

One member of the school committee of Lynnfield, Mass., made a rule that if a pupil was tardy twice the teacher should send the pupil to him. This rule was subsequently assented to by the other members of the board. A girl was tardy the second time, and the teacher told her to go to the above member of the committee. She left the schoolroom, but, instead of obeying the command of the teacher, went directly home. For this disobedience the teacher suspended her from school until she should conform to the rule.

The girl brought suit, but the Supreme Court de-

cided in favor of the rule. The justice delivering the opinion of the court says: "For the disobedience of a regulation established to prevent tardiness, the plaintiff was suspended from a public school until she should conform to the rule. . . . Upon the case here presented we cannot see that there was not a reasonable exercise on the part of the teacher of the power necessary to punish disobedience and promote the proper government and discipline of the school."

Vermont, 1876.—*Ferriter v. Tyler*, 48 Vt. 444.

An important case was decided by the Supreme Court of Vermont in 1876. The decision was to the effect that the committee of a school district had authority to exclude children from school for absence contrary to the rules thereof, although such absence was in obedience to the command of Catholic parents and their priest, and for the purpose of attending religious services.

The priest of a Catholic church in Brattleboro, on the morning of June 4th, 1874, sent to the committee of Brattleboro this note:

"You will confer a favor on us Catholics by exempting the Catholic children from attending school on all holy days. I should have called and explained our reasons, but have not had opportunity as yet."

The committee replied as follows:

"Your note is just received. To comply with

your request involves closing two of our schools, and greatly interrupting several others. This we never have done, and cannot do. We have great pride in our schools, in which the Catholic children are as well treated as any."

The 4th day of June, 1874, was called "*holy Corpus Christi* day;" and considered and set apart by the Catholic Church as a holy day. Catholic parents were directed by their spiritual adviser, their priest, to attend services on that day, and have their children do so. On the day before, the Catholic children informed their teachers that they should not attend school on the next day, that it was a holy day, and they had been directed by their priest to attend services at church on that day. The teachers replied that they could not be excused for that purpose. On the morning of the 4th of June five or six of such scholars called on the committee and said they had heard that the committee would not excuse them, if they were absent to attend church on that day; to whom the committee replied that they had not been requested to excuse them, and that they could not have done so, if they had been requested. The children then went to their priest, and soon returned with the note from him above recited.

Some sixty Catholic children, by direction and command of their parents, were kept from school to attend religious services. When they applied for

admission to the schools they were told by the committee that, as they had absented themselves without permission, and in violation of the rules of the school, which they well understood, they could not return without an assurance from their parents or their priest that in future they would comply with the rules of the schools. The committee assured the children, their parents, and also the priest, that if the schools would not again be interrupted in like manner they would gladly admit the children to them. The priest and parents refused to comply with this proposal, and claimed that on all days which they regard as holy, they could, as matter of right, take their children from the schools, without any regard to the rules thereof.

For more than ten years there had been a rule, required by the committee, that those registered as scholars for a given term should be constant and regular in their attendance, and not be absent, except by permission of the teachers or the committee, on reasonable cause shown. The committee claimed the right, which they had exercised, to suspend from school during the remainder of the current term, scholars who violated the rule.

The parents asked the Supreme Court to restrain the committee from excluding their children from school, and based their claims upon two grounds:

First. "Their constitutional right to worship God according to the dictates of their own consciences,

without being abridged in the enjoyment of their civil rights." Second. Their "right to exercise parental authority and government over their children as regards their moral training and culture."

The court held, at the outset, that the parents were not the proper parties to the suit, but, in view of the importance of the subject, they considered it on a broader ground, by supposing the children to have been substituted for the parents.

The "rights of conscience" article in the Constitution of Vermont is: "That all men have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences and understandings, as in their opinion shall be regulated by the word of God; and that no man ought to, or of right can, be compelled to attend any religious worship, etc., contrary to the dictates of his conscience; nor can any man be justly deprived or abridged of any civil right as a citizen on account of his religious sentiments or peculiar mode of religious worship; and no authority can or ought to be vested in or assumed by any power whatever that shall in any case interfere with, or in any manner control, the rights of conscience in the free exercise of religious worship: nevertheless, every sect or denomination of Christians ought to observe the Sabbath or Lord's day, and keep up some sort of religious worship, which to them shall seem most agreeable to the revealed will of God."

The following are extracts from the opinion rendered by the court :

“ . . . Art. III. (above recited) was not designed to subjugate the residue of the Constitution, and the important institutions and appliances of the government provided by the enacted laws for serving the highest interests of the public as involved in personal condition and social relations, to the peculiar faith, personal judgment, individual will or wish of any one in respect to religion, however his conscience might demand or protest. In that respect it is implied that while the individual may hold the utmost of his religious faith, and all his ideas, notions, and preferences as to religious worship and practice, he holds them in reasonable subservency to the equal rights of others, and to the paramount interests of the public as depending on, and to be served by, general laws and uniform administration. . . .

“Let it be granted that parents and others may, upon their own respective reasons, control the attendance of the scholars, as against the official right of the committee in that behalf, and practically the ground of system and order and improvement has no existence. . . . If a Catholic citizen should be serving on a jury in the midst of a trial when divine service in his church on holy *Corpus Christi* should be in progress, would it be a violation of his rights under said Art. III. to compel him to keep his seat

and serve through the trial? The same may be asked of the Jew or the seventh-day Baptist, who should be required to do like service on Saturday. The same may be asked of a devout Methodist, when a camp-meeting or a love-feast should be in progress in his vicinage. If either, or all, should refuse to serve, would their rights of conscience under Art. III. be a valid defence in a prosecution for the penalty in such case provided. . . .

“Let it be repeated then, that that article in the Constitution was not designed to exempt any person or persons of any sect, on the score of conscience as to matters of religion, from the operation and obligatory force of the general laws of the state, authorized by other portions of the same instrument, and designed to serve the purposes contemplated by such other portions; it was not designed to exempt any persons from the same subjection that others are under to the laws and their administration, on the score that such subjection at times would interfere with the performance of religious rites, and the observance of religious ordinances, which they would deem it their duty to perform and observe but for such subjection. . . .

“It remains now to be considered whether the bill can be maintained on the other ground, namely, the prerogative of parents to control their children as scholars, as against the prerogative of the committee to make and enforce the rule in question. This

does not involve any right or question of conscience under the Constitution, but only the matter of *legal* right under the statutes as to public schools. . . . By our statutes the committee are charged with the duty of 'adopting all requisite measures,' etc., as before recited.* The graded school in Brattleboro is organized and acts in pursuance of the statutes in that behalf. The committee are chosen and charged with their duties under the same statutes. They adopted rules for the regulation of the schools, and for the improvement of the scholars in learning. The rule in question is for the purpose of inducing and enforcing constancy in attendance. That such constancy is essential to such improvement is not debatable. That such attendance is requisite as matter of regulation in order to the necessary classification of the scholars in reference to age, capacity, studies, and proficiency is not debatable. Those who attend constantly cannot be required to linger, in order that the inconstant may keep along with them; nor can such inconstant scholars keep equal pace with those who attend constantly. The rule, then, is such as is contemplated by the statute, so far as the *purpose* of it is concerned. That purpose is indispensable to the attainment of the object and end proposed by the

* "Adopting all requisite measures for the inspection, examination, and regulation of the schools, and the improvement of the learning." (Gen. Sts. c. 22, § 39.)

statutes, both as to the individual scholar and as to all others who may be affected by his attendance and absence. The answer states, as before recited, that the rule had been in operation for more than ten years. The children of the orators were subjected to its operation in the present instance. Was that unlawful?

“If the orators had the right to control the attendance of their children as against that rule, then the committee had not the right to maintain and enforce such rule. We are not prepared to sanction a view of the subject that would subordinate the authority of the committee, in the matter of the attendance of the registered scholars, to the will of parents. On the other hand, we do not hesitate to hold and declare as matter of law that, in this respect, the citizen is in subordination to the lawful rules for the regulation of schools, and the improvement of scholars in learning; and this is for the same fundamental reason that he is in subordination to the statutes themselves, on that or any other subject; and it is no more his right to defy or disregard those rules than it is to defy and disregard any statute that affects him as a citizen in respect to schools, or any other subject involving the common weal, as it is to be provided for under the Constitution by the legislation of the state. . . .

“Recurring now to what is stated in the answer as to the manner in which the rule has been administered,

it is proper to remark, that the lawfulness and propriety of the rule are not to be tested or adjudged upon the presumption that the penal part of it will be unjustly or unwarrantably enforced. The presumption is the other way, to wit, that it will be administered justly, and upon, and with reference to, warrantable occasion. If a case should arise in which it should appear that the penalty had been inflicted outside of or beyond the fair scope and reason of the rule, it would be both the province and the duty of the courts to accord proper remedy. But, as before demonstrated, this is not such a case. And this leads to the further remark, that the remedy is not sought in this case as against the refusal of leave to be absent on the 4th of June; but as against the imposing, as the condition of remitting the penalty, a promise that absence for a similar cause should not be repeated that term. Such promise being refused, the penalty of exclusion was not remitted, and the children did not return to the schools; and hence the position assumed by the orators—the same as already stated—that the committee had not the lawful right to exclude scholars who should be absent by the direction of their parents, contrary to the established rule of the school.

“As before intimated, this position takes no account of any difference of occasion or reason for such direction of parents, whether it be religious

service or secular employment or amusement, but is on the ground only of the right of the parent as against the rule of the school. In reference to that position, in explicit statement, as the result of the discussion, it is held that the scholars of a school are amenable to the school authorities as to their conduct as scholars affecting the school, notwithstanding the prerogative of their parents in respect to them.* . . . The rule in question in this case, and the enforcement of it, are subject to the judgment of the courts as between the parties to the suit. It is easy to suppose cases in which such enforcement would be beyond the lawful right of the committee. The rule itself, in terms and intent, contemplates exclusions as a penalty only where permission to be absent is withheld for want of reasonable cause shown. In case of casual sickness of the scholar; of sickness or death in the family of the scholar; of some impediment, like fire or flood; in case of various incidents of current life, giving occasion for temporary absence, the enforcement of the penalty of exclusion would, under such circumstances, be adjudged to be unauthorized under the statutes and law by which the subject is governed."

* See as to this point, p. 8. (31 Iowa, 562.)

Missouri, 1880.—*King v. Jefferson City School Board*, 71 Mo. 628.

The following is from an opinion rendered by the Supreme Court of Missouri in 1880, in an action against the School Board of Jefferson City for the suspension of a boy under the rule stated.

"The rule is as follows: 'Any pupil absent six half days in four consecutive weeks, without satisfactory excuse, shall be suspended from school.' The statute provides (R. S. 1879, § 7045) that 'the board shall have the power to make all needful rules and regulations for the organization, grading, and government of the schools in their district.' It is clear that the legislature have intrusted to this school board the duty of making regulations, touching the government of the school, of the necessity and propriety of which they are primarily the judges. They are elected by the people of the district, and must be presumed to be conversant with the subject, and have no motive to make any rules except such as, in their best judgment, are necessary and proper to promote the objects of our common-school system. . . .

"It is said that occasional absences from school on the part of the pupil, or truancy as it is familiarly termed, is of no importance to any one except the pupil or his parents, and its indulgence is, therefore, not to be attended with such punishment as

suspension or expulsion from the school entirely; that every child has a right to go to the public school, and that right cannot be taken away by a rule of the board; that such rule is subversive of the object of our system of common schools, which was designed to throw open and leave open the doors of the school to all children of the proper age, and give them an opportunity of acquiring such education as will fit them for the after-duties of life. This is true, but this right of attending school necessarily requires, when the school is joined, and while such attendance continues, a submission to the regulations of the school.

“Suppose Rule 11 to be inverted, and instead of reading as it now stands, should read thus; ‘Any pupil is at liberty to go a-fishing during school hours and be absent a half day or a whole day, and as many days as he pleases, provided he conducts himself decently when in attendance on school.’ And this is the point to which the argument of the plaintiff tends. The pupil, it is urged, is at liberty to be absent when he pleases, and such absence is a matter solely between him and his parents. But the studies in our public schools are, I presume, classified according to the ages and advancement of the scholars; and the continued or repeated absences of one of a class not only is injurious to the absentee, but if allowed beyond a certain point is calculated to demoralize those who attend, and de-

range the orderly instructions of the teacher. Taxes are not collected to pay teachers to sit in front of empty benches, or to hunt up truant boys. Such absences, when without excuse, are the fault of the parents, whose business it is to see that the attendance of their child is regular, unless prevented by causes which will, of course, be an excuse under the rule now in question. My opinion is, that the rule in question was clearly within the power of the board of directors, and that it is not our business to supervise its expediency, even if we might differ with the board on that point, but all the judges are of opinion that the rule was a reasonable and proper one."

Illinois, 1883.—*Churchill v. Fewkes*, 13 Brad. Rep. 520.

This action was by pupil against school directors and teachers for expulsion from school. The directors had made the following rules:

"Any pupil who shall be absent six one half days, without a valid excuse, shall be liable to suspension from study, and no pupil thus suspended shall be restored without permission from the board."

"All pupils will be required to bring written excuses from their parents to teachers for absence, and such excuses must be satisfactory and reasonable, otherwise it will not be granted."

The pupil suspended was absent from school about two weeks, in violation of these rules. When

she returned she declined to give any reason whatever for her absence. The teacher called her attention to the rules, and informed her that it would be necessary for her to bring a written excuse from her mother. The parents refused to give a written excuse showing why she had been absent, although she was absent with their knowledge and consent. After several days the principal of the school and assistant teacher each wrote a letter, couched in polite terms, to the mother (believing her to be the only parent), calling her attention to the rules of the school as prepared and adopted by the board of directors, and their duty in the premises, and respectfully asking that she would furnish her daughter with a reasonable excuse for her absence from school. No reply was made to these letters, and after the lapse of some four or five days, no excuse having been received from the parents, the child was suspended from further recitations.

The suit was then brought.

The court decided that an action would not lie against a public officer acting in good faith, affirming the law as laid down in *McCormick v. Burt* (p. 134), and thus commented upon the rule :

“The rule in question is not a hard or harsh one. It does not of itself indicate any sinister or malevolent purpose, or wicked force, on the part of the directors. It does not trench upon the rights or dignity of any one. We instantly and properly re-

pel any encroachment upon our rights as citizens. We have a proper pride and ambition in maintaining those rights under any and all circumstances. But I am utterly unable to understand how this simple rule or regulation, requiring the pupil in certain cases to bring a written excuse from its parents to the teacher, is an attack upon, or an abridgment of, our inalienable rights as citizens of this free country."

RULES CONCERNING STUDIES.

Maine, 1854.—*Donahoe v. Richards*, 38 Me. 379.

The school committee of Ellsworth, Me., required the use of the Bible in their schools; and that all of sufficient capacity should read therein, and directed the use of the common, or Protestant, version. A Catholic girl was expelled for not complying with this rule, and she began suit for this expulsion. Both the girl and her father considered the reading of this version to be sinful, and had been so instructed by the Church. The case was decided by the Supreme Court in 1854, and in favor of the committee.

The following extracts are made from the opinion of the court :

"The present suit is by the minor, for her alleged wrongful exclusion from school in consequence of her refusal to read in one of the books directed by the defendants, who are the superintending school

committee of the town of Ellsworth, to be used in the school of which she was a member. . . .

“By the act of 1850, c. 193, art. 5, § 1, the powers and duties of superintending school committees are defined and established, and the authority is given them ‘to expel from any school any obstinately disobedient and disorderly scholar, after a proper investigation of his behavior, if found necessary for the peace and usefulness of the school; also, to restore him to the school on satisfactory evidence of his repentance and amendment.’ . . .

“By the act before referred to, under art. 5, § 1, among various powers and duties conferred upon the superintending school committee, they are empowered, ‘fourthly, to direct the general course of instruction, and what books shall be used in the respective schools.’

“The right to prescribe the general course of instruction and to direct what books shall be used must exist somewhere. The legislature have seen fit to repose the authority to determine this in the several superintending school committees. They may therefore rightfully exercise it.

“The power thus conferred is in the most literal and explicit terms. The power of establishing by-laws is given to the several city governments of the state. This court is authorized to establish rules for the regulation of business in court. The only restriction in either case is that the by-laws and rules,

thus established, shall not conflict with the statutes and Constitution of the state. Within these limits they have all the force and vigor of legislative enactments. So, in this case, the same general and extensive power over the subject-matter is granted; and the course of studies, and the books prescribed by the superintending school committee are to be regarded as if established and prescribed by the act of the legislature.

“The power of selection is general and unlimited. It is vested in the committee of each town. . . . The manner of its exercise must depend upon the judgment, discretion, and intelligence of the different committees. The actual selection at any given time and place depends upon the views and opinions of those upon whom the law devolves this duty. The power of ultimate decision must rest somewhere. No right of appeal is granted. No power of revision is conferred upon any other tribunal. Because the right of selection may be injudiciously or unwisely exercised, it by no means follows that it does not exist. This court cannot make an affirmative rule as to what books shall be selected, nor a negative rule prescribing what shall not be used, if the right to selection be exercised in conformity with existing statutes and the Constitution. The power of selection includes that of making injudicious and ill-advised selections, but, there being no right of appeal, the selection is binding and conclusive. . . .

“If the right to direct the course of instruction and the books to be used is given, the right to enforce obedience to the determining power must manifestly exist or the determination will be ineffectual. It would be worse than idle to grant this power to direct, if any one can set at naught the action of the committee.

“The committee may enforce obedience to all regulations within the scope of their authority. If they may select a book, they may require the use of the book selected. If the plaintiff may refuse reading in one book, she may in another, unless, for some cause, she is exempted from the duty of obedience. If she may decline to obey one requirement, rightfully made, then she may another, and the discipline of the school is at an end. It is for the committee to determine what misconduct requires expulsion. That is expressly left to their determination. . . .

“The plaintiff seeks to avoid these conclusions by denying that the book selected was one in which she could be constitutionally compelled to read upon pain of expulsion, in case of her refusal to obey. She claims exemption from the general duty of obedience from the particular character of the book in which she was required to read. The question, therefore, is whether, if the legislature should by statute direct any version of the Bible to be read in schools, and should impose the penalty of expulsion, in the

case of refusal, such statute would be a violation of the Constitution. The use of the Bible as a reading-book is not prohibited by any express language of the Constitution.

"Is its use for that purpose in opposition to the spirit and intention of that instrument? If it be not, if it be a book which may be directed, within the spirit and meaning of the Constitution, to be used in schools, it is obvious that its use may be required by all; for a regulation which any scholar may violate with impunity would cease to have the force and effect of a rule. . . .

"But the instruction here given is not in fact, and is not alleged to have been, in articles of faith. No theological doctrines were taught. The creed of no sect was affirmed or denied. The truth or falsehood of the book in which the scholars were required to read was not asserted. No interference by way of instruction, with the views of the scholars, whether derived from parental or sacerdotal authority, is shown. . . .

" . . . The plaintiff, indeed, makes no objection to the Bible as a book which she may not rightfully be required to read in schools, but only to a particular translation. Indeed, the report finds that she was willing to read from the Douay version. It is apparent that it is highly desirable that in the same class there should be a uniformity of books to be used. But if the book is proper, it is immaterial to the

soundest principles of morality, then is there any translation which can be justly deemed adverse to those principles? Does the version in which the plaintiff was willing to read contravene sound morality, even in the judgment of the defendants? Does the version which the defendants required to be read conflict, even in the opinion of the plaintiff, with pure morality? If not, then the book itself, alike in the judgment of the plaintiff and defendants, is one which may be read without reasonable grounds of objection in schools. . . .

“Such being the case, all that is shown by the selection of one version is simply a preference of one over another when there must, from necessity, be a difference of opinion. But in case of numerous translations of a work, in itself unobjectionable, a preference may be expressed and acted upon without infringing upon the just rights of others.

“All that is done is, that a committee for the time being prefer one to another. Both, undoubtedly, may be used in schools, or both may be excluded therefrom. . . .

But the claim of the plaintiff is much more liable to the exception that it is creating the subordination or preference of one sect or denomination over another. Her claim to be exempted from a general regulation of the school rests entirely on her religious belief, and is to the extent that the choice of reading-books shall be in *entire subordination to her*

faith, and because it is her faith. The preference is manifestly given, if, in the selection to be made, the defendants were bound to defer to the doctrines and authority and teachings of the sect of which she is a member. The right of negation is, in its operation, equivalent to that of proposing and establishing. The right of one sect to interdict or expurgate would place all schools in subordination to the sect interdicting or expurgating.

“If the claim is that the sect of which the child is a member has the right of interdiction, and that any book is to be banished because under the ban of her Church, then the preference is practically given to such Church, and the very mischief complained of is inflicted on others. . . .

“The case finds that the authorities of the sect of which the plaintiff is a member regard it sinful to read in the version directed by the defendants; but if a book is to be excluded for that cause in one instance, it must be in all, and the use of books would be made to depend, not upon the judgment of those to whom the law intrusts their selection, but upon that of the authorities of a Church, so that each sect would have precedence as a sect and for that cause.

“From the report, it appears that the plaintiff, from conscientious religious scruples, refused to read in the version designated by the defendants as the one to be used, and that she and her father both re-

garded it as sinful so to do, both having been so taught by the authorities of the Church of which they are members.

“As the suit is by the child, as her rights only are alleged to be violated, the conscientious religious views of the father are not involved in the determination of this suit. He is no party to it, for the purpose of obtaining compensation, nor is it brought on account of any infraction of his rights. The real inquiry is, whether any book opposed to the real or asserted conscientious views of a scholar can be legally directed to be used as a school-book, in which such scholar can be required to read. The claim, on the part of the plaintiff, is that each and every scholar may set up its own conscience as over and above the law. It is a claim of an exemption from a general law because it may conflict with the particular conscience.

“The action being by the scholar, the invasion being of its rights, it is apparent that if the fact of opposition to conscience on the part of a child affords a well-grounded reason for its exemption from the general rules of the school—that it may operate to the exclusion of books to an indefinite extent. As the existence of conscientious scruples as to the reading of a book can only be known from the assertion of the child, its mere assertion must suffice for the exclusion of any book in the reading or in the hearing of which it may allege a wrong to be

done to its religious conscience. The claim, so far as it may rest on conscience, is a claim to annul any regulation of the state made by its constituted authorities. As a right existing on the part of one child it is equally a right belonging to all. As it relates to one book, so it may apply to another—whether relating to conscience or to morals. Error may reach the understanding by the hearing equally as by the vision, by the ear as by the eye. As the child may object to reading any book, so it may equally object to hearing it read, for the same cause; and thus the power of selection of books is withdrawn from those to whom the law intrusts it, and by the right of negation is transferred to the scholars.

“The right, as claimed, undermines the power of the state. It is that the will of the majority shall bow to the conscience of the minority, or of one. If the several consciences of the scholars are permitted to contravene, obstruct, or annul the action of the state, then power ceases to reside in majorities, and is transferred to minorities. Nor is this all. While the laws are made and established by those of full age, the right of obstruction, of interdiction, is given to any and all children, of however so immature an age or judgment.”

Vermont, 1859.—*Guernsey v. Pitkin*, 32 Vt. 226.

A teacher of a district school in Vermont required that all scholars in grammar should write English composition, although not mentioned in the list of studies required by law to be taught. A boy named Guernsey declined to yield to this rule, and the teacher informed the committee. The committee visited the school, talked with the boy, and told the teacher he would see the boy's father, and if the father sent word that he did not wish his boy to write compositions, she could excuse him. The boy came to school the next day, but without an excuse. The teacher sent him to his father to see if he had not some word to send her on the subject. The parent returned answer that if she had any business with him she must call upon him. The committee then told the boy he must not attend the school unless he would obey the regulations, and instructed the teacher not to treat him as a scholar unless he obeyed her rule as above, or she received a request from his father to excuse him. The boy continued to attend the school for about three weeks, but the teacher would not hear him in recitation, or assist him in his lessons. He then left the school and sued the committee.

The action of the committee was upheld by the courts. The lower court ruled that the requirement of the teacher in regard to compositions was reason-

able and proper, and that by judicious means she endeavored to induce the pupil to comply therewith, and that there was no sufficient reason for his not complying with it. This ruling was sustained by the Supreme Court, from the opinion of which the following extracts are made :

“ But in regard to those branches which are required to be taught in the public schools, the prudential committee and the teacher must, of necessity, have some discretion as to the order of teaching them, the pupils who shall be allowed to pursue them, and the mode in which they shall be taught. If this were not so it would be impossible to classify the pupils, or for one teacher to attend to more than ten or twelve pupils.

“ With this concession to the teacher of fixing the mode of teaching these branches, it seems very obvious that English composition may fairly be regarded as an allowable mode of teaching many of these branches.”

Wisconsin, 1874.—*Morrow v. Wood*, 35 Wis. 59.

In 1874 a case arose in Wisconsin the decision in which has been widely discussed and variously commented upon. A man named Wood sent his son, a boy about twelve years of age, to school. He wished him to study orthography, reading, and writing, and also wished him to give particular attention to the study of arithmetic. In addition to these

studies, the teacher, named Morrow, at once required the child to study geography. The father, on being informed of this, told his boy not to study geography, but to attend to his other studies; and the teacher was promptly and fully advised of this wish of the parent, and also knew that the boy had been forbidden by his parent from taking that study at that time. But, claiming and insisting that she had the right to direct and control the boy in respect to his studies, even as against his father's orders, she commanded him to take his geography and get his lesson. And when the boy refused to obey her, and did as he was directed by his father, she resorted to force to compel obedience. The father instituted a criminal action against her for the assault on his boy. She afterwards sued the father, complaining that the suit against her for the assault was malicious prosecution. The jury in the lower court was instructed that the order given by the father to his son not to study geography "did not annul or abridge the right of the teacher to control that matter;" "that under the circumstances, as proved, she, the plaintiff, had a right to require the scholar's obedience;" and that the infliction of the punishment was justifiable if "reasonable and commensurate with the boy's contumacy." The judgment in the lower court was in favor of the teacher, but in the Supreme Court this judgment was reversed, and the following decision made:

" . . . And whether she had or had not the power to correct him is the question in the case ; for it is not pretended that the boy was otherwise disobedient, or was guilty of any misconduct, or violated any rule or regulation adopted for the government of the school. The circuit court, in considering the relative rights and duties of parent and teacher, among other things, told the jury that when a parent sent his child to a district school he surrendered to the teacher such authority over his child as is necessary to the proper government of the school, the classification and instruction of the pupils, including what studies each scholar shall pursue, these studies being such as are required by law, or are allowed to be taught in public schools. And the court added, in this connection, that a prudent teacher will always pay proper respect to the wishes of the parent in regard to what studies the child should take, but, where the difference of view was irreconcilable on the subject, the views of the parent in that particular must yield to those of the teacher, and that the parent, by the very act of sending his child to school, impliedly undertakes to submit all questions in regard to study to the judgment of the teacher. In our opinion there is a great and fatal error in this part of the charge, particularly when applied to the facts in this case, in asserting or assuming the law to be that, upon an irreconcilable difference of views between the parent and teach-

er as to what studies the child shall pursue, the authority of the teacher is paramount and controlling, and that she had the right to enforce obedience to her commands by corporal punishment. We do not think she had any such right or authority, and we can see no necessity for clothing the teacher with any such arbitrary power. We do not really understand that there is any recognized principle of law, nor do we think there is any rule of morals or social usage, which gives the teacher an absolute right to prescribe and dictate what studies a child shall pursue, regardless of the wishes or views of the parent, and, as incident to this, gives the right to enforce obedience even as against the orders of the parent. From what source does the teacher derive this authority? From what maxim or rule of the law of the land? Ordinarily, it will be conceded, the law gives the parent the exclusive right to govern and control the conduct of his minor children, and he has the right to enforce obedience to his commands by moderate and reasonable chastisement. And, furthermore, it is one of the earliest and most sacred duties taught the child to honor and obey its parents. The situation of the child is truly lamentable if the condition of the law is that he is liable to be punished by the parent for disobeying his orders in regard to his studies, and the teacher may lawfully chastise him for not disobeying his parent in that particular. And yet this was the

precise dilemma in which the defendant's boy was placed by the asserted authority on the part of the parent and the teacher.

"Now we can see no reason whatever for denying to the father the right to direct what studies, included in the prescribed course, his child shall take. He is as likely to know the health, temperament, aptitude, and deficiencies of his child as the teacher, and how long he can send him to school. All these matters ought to be considered in determining the question what particular studies the child should pursue at a given term. And where the parent's wishes were reasonable, as they seem to have been in the present case, and the teacher, by regarding them, could in no way have been embarrassed, her conduct in not respecting the order given the boy was unjustifiable. If she had allowed the child to obey the commands of his father it could not possibly have conflicted with the efficiency or good order or well-being of the school. The parent did not propose to interfere with the gradation or classification of the school, or with any of its rules and regulations, further than to assert his right to direct what studies his boy should pursue that winter. And it seems to us a most unreasonable claim on the part of the teacher to say that the parent has not that right, and, further, to insist that she was justified in punishing the child for obeying the order of his father rather than her own. Whence,

we again inquire, did the teacher derive this exclusive and paramount authority over the child, and the right to direct his studies contrary to the wish of the father? It seems to us it is idle to say the parent, by sending his child to school, impliedly clothes the teacher with that power in a case where the parent expressly reserves the right to himself, and refuses to submit to the judgment of the teacher the question as to what studies his boy should pursue. We do not intend to lay down any rule which will interfere with any reasonable regulation adopted for the management and government of the public schools, or which will operate against their efficiency and usefulness. Certain studies are required to be taught in the public schools by statute. The rights of one pupil must be so exercised, undoubtedly, as not to prejudice the equal rights of others. But the parent has the right to make a reasonable selection from the prescribed studies for his child to pursue, and this cannot possibly conflict with the equal rights of other pupils. In the present case the defendant did not insist that his child should take any study outside of the prescribed course. But, considering that the study of geography was less necessary for his boy at that time than some other branches, he desired him to devote all his time to orthography, reading, writing, and arithmetic. The father stated that he thought these studies were enough for the child to take; and he

said he was anxious the boy should obtain a good knowledge of arithmetic in order that he might assist in keeping accounts.

"He wished to exercise some control over the education of his son, and it is impossible to say that the choice of studies which he made was unreasonable or inconsistent with the welfare and best interest of his offspring. And how it will result disastrously to the proper discipline, efficiency, and well-being of the common schools to concede this paramount right to the parent to make a reasonable choice from the studies in the prescribed course which his child shall pursue is a proposition we cannot understand. The counsel for the plaintiff so insist in their argument, but, as we think, without warrant for the position. It is unreasonable to suppose any scholar who attends school can or will study all the branches taught in them. From the nature of the case some choice must be made, and some discretion be exercised as to the studies which the different pupils shall pursue. The parent is quite as likely to make a wise and judicious selection as the teacher. At all events, in case of a difference of opinion between the parent and the teacher upon the subject, we see no reason for holding that the views of the teacher must prevail, and that she has the right to compel obedience to her orders by inflicting corporal punishment upon the pupil. The statute gives the school board pow-

er to make all needful rules and regulations for the organization, gradation, and government of the school, and power to suspend any pupil from the privileges of the school for noncompliance with the rules established by them, or by the teacher with their consent; and it is not proposed to throw any obstacle in the way of the performance of these duties. But these powers and duties can be well fulfilled without denying to the parent all right to control the education of his children.

"These views are decisive of this case. Under the circumstances the plaintiff had no right to punish the boy for obedience to the commands of his father in respect to the study of geography. She entirely exceeded any authority which the law gave her, and the assault upon the child was unjustifiable."

Illinois, 1875.—*Rulison v. Post*, 79 Ill. 567.

One Frances S. Post attended a district school in Illinois, and was in a class which, by the course of study prescribed by the directors, was required to study book-keeping. She was requested by the principal of the school to procure books for the purpose, but declined, saying her father objected to her studying it. She was notified, as were also her parents, that unless she complied with the rule she would be expelled from the school. On going to the school without the book she was told her rights as a scholar had ceased, and she was requested to

leave, but, declining, the teacher took hold of her and led or pushed her out of the building. She returned to the room and was again ejected. She instituted an action against the teacher and directors for trespass, and the jury gave her a verdict, and assessed damages at \$130.

Book-keeping was not one of the studies enumerated in the law to be taught, but was prescribed under a provision of the law which allowed the teaching of other branches than those enumerated. The Supreme Court sustained the above verdict. The reasons given therefor are contained in the following extracts from the opinion :

"The school law [reciting it] under which these directors derived their powers and were then acting provides that the school directors 'may direct what branches of study shall be taught, and what textbooks shall be used in their respective schools, and may suspend or expel pupils for disobedient, refractory, or incorrigibly bad conduct.'* The next section provides that no teacher shall be authorized to teach a school under that act who is not qualified to teach orthography, reading in English, penmanship, arithmetic, English grammar, modern geography, and the history of the United States; and the same section requires that such teacher shall be examined by the county superintendent of schools, and

* For the law at present see Appendices B and C.

if found to be qualified shall be given a certificate of that fact. The same section contains this proviso, 'that nothing herein contained shall prevent the teaching in the common schools of other and higher branches than those enumerated in this section.' From these enactments it is manifest that it was the design of the lawmakers that all of the children of the state should be afforded an opportunity to acquire, free of charge, a knowledge of the enumerated branches required to be taught. . . .

"In the performance of their duty in carrying the law into effect the directors may prescribe proper rules and regulations for the government of the schools of their district, and enforce them. They may, no doubt, classify the scholars, regulate their studies and their deportment, the hours to be taught, besides the performance of other duties necessary to promote the success and secure the well-being of such schools. But all such rules and regulations must be reasonable and calculated to promote the objects of the law—the conferring of such an education upon all, free of charge. . . .

"The law, for the purpose of preserving the school and promoting its usefulness, has empowered the directors to suspend or expel scholars, but only for disobedient, refractory, or incorrigibly bad conduct. It is by the commission of one of these acts alone that the pupil can forfeit his right to the privileges of the school; and this forfeiture can only be en-

forced, and the right lost, after all other reasonable means have failed. . . .

“As to the means the directors may employ for the purpose of imparting knowledge in the enumerated branches, and the extent of their power to compel the pupils to study all of them, or whether that is optional with the parent or guardian, we do not pretend to decide in this case. That question is not presented by this record, nor has it been discussed by counsel; we therefore pass it over until it is properly presented. The question here presented is whether the power has been granted the directors to compel scholars to study other and higher branches than those enumerated in the law. . . .

“They may undeniably require the teacher to impart instruction in other and higher branches than those enumerated, but that is discretionary, and, being discretionary, they cannot be compelled to make the requirement; it is only permissive to the directors, and is optional with parents, guardians, or pupils whether the scholars shall study such branches, and, being optional, pupils cannot be compelled to pursue such studies without the assent of the parent or guardian, or their own consent.”

Ohio, 1876.—*Sewell v. Board of Ed.*, 29 O. St. Rep. 89.

The School Board of Defiance, Ohio, prescribed the study of rhetoric, and one of the rules adopted by the board of government of the schools

provided that if any pupil should fail to be prepared in this study he or she should, unless excused on account of sickness or other good cause, be suspended. A boy named Andrew Sewell refused to comply with the rule or offer an excuse, and the teacher, with the consent of the board, suspended him until he should comply with the rule or offer excuse. The boy's father brought suit against the board. The Supreme Court decided that the rule was a reasonable one.

From opinion: "The act under which the common schools of Defiance were organized gives to the board of education of the town the entire control and management thereof; authorizes the board to make and enforce all necessary rules and regulations for the government of teachers and pupils therein, and to determine 'the various studies and parts of study' in which instruction shall be given in the several departments thereof.

"The act does not direct how, or in what manner, the rules and regulations which the board may adopt for the government of the schools under its care and management shall be enforced, but leaves the whole subject of the making of such rules and their enforcement to the judgment and sound discretion of the board. The rule in question, for the enforcement of which, in the manner stated, damages are claimed by the plaintiff in this action, was, in our opinion, reasonable.

"The pupil having failed to comply with the rule, the teacher, in excluding him from the school until he should comply with it, or offer a reasonable excuse to the board for his non-compliance, acted under the authority of and with the consent of the board, and the action of the defendants in the premises having been, as they aver in their answer, in their judgment, for the best interests and welfare of the school, they are not liable in damages to the plaintiff therefor."

Illinois, 1877.—*Trustees v. The People*, 87 Ill. 303.

Frank Van Allen was examined for admission to the free high-school of Lake View, Illinois. He passed examination, and was sufficiently proficient in all branches of study except that of grammar to entitle him, under the regulations, to admission. He was denied admission solely because of his inability to pass satisfactory examination in grammar. His father had forbidden him to study grammar, and desired that he should pursue no study which necessitated a previous knowledge of grammar, and asked that he be admitted to pursue only those studies in which he was sufficiently proficient to entitle him to admission. The school trustees refused his request. He then resorted to the courts, which decided the rule unreasonable, and ordered the trustees to admit the boy.

From opinion: "The powers and duties of the

trustees being, with respect to the high-school, the same as those of directors with respect to the district school, it becomes necessary to ascertain what are the powers and duties of directors with respect to district schools. So far as they affect the question before us, they are, to adopt and enforce all necessary rules and regulations for the management and government of the schools; to direct what branches of study shall be taught, and what text-books and apparatus shall be used, and to enforce uniformity of text-books." (Rev. Stat. 1874, p. 962-3, § 48.)

"Here, then, is power to decide what branches of study shall be taught in the high-school, what text-books shall be used, and to prescribe necessary rules and regulations for the management and government of the school; but not to decide what particular branches of study, of those decided to be taught, shall be pursued by each pupil. Under the power to prescribe necessary rules and regulations for the management and government of the school, they may, undoubtedly, require classification of the pupils with respect to the branches of study they are respectively pursuing, and with respect to proficiency or degree of advancement in the same branches; that there shall be prompt attendance, diligence in study, and proper deportment. All regulations or rules to these ends are for the benefit of all, and presumptively promotive of the interests of all. No parent has the right

to demand that the interests of the children of others shall be sacrificed for the interests of his child, and he cannot, consequently, insist that his child shall be placed or kept in particular classes, when by so doing others will be retarded in the advancement they would otherwise make; or that his child shall be taught studies not in the prescribed course of the school, or be allowed to use a text-book different from that decided to be used in the school, or that he shall be allowed to adopt methods of study that interfere with others in their studies. The rights of each are to be enjoyed and exercised only with reference to the equal rights of all others.

“ But no attempt has hitherto been made in this state to deny, by law, all control by the parent over the education of his child. Upon the contrary, the policy of our law has ever been to recognize the right of the parent to determine to what extent his child shall be educated, during minority, presuming that his natural affections and superior opportunities of knowing the physical and mental capabilities and future prospects of his child will insure the adoption of that course which will most effectually promote the child's welfare. The policy of the school law is only to withdraw from the parent the right to select the branches to be studied by the child, to the extent that the exercise of that right would interfere with the system of instruction prescribed for the school, and its efficiency in imparting education to all entitled to share in its benefits. . . .

“If the relator’s son had possessed the required knowledge of grammar, but would not have been compelled to further pursue that branch of study or to pursue any other branch of study to which a knowledge of grammar was essential, it is impossible to perceive how his position in the high-school, so far as it might affect teacher and pupils, would be different from that he now occupies. He is qualified to pursue, as a pupil, every branch of study that the relator desires that he shall pursue in the high-school. If he is qualified to go on with the studies selected by the relator, of what consequence is it that he is ignorant of some branch of study in no manner connected with those branches? This may, possibly, be a misfortune to Frank Van Allen—it surely cannot affect the government of the school or incommode the other students or the teachers. Whether fortunate or unfortunate to him, however, it is for the parent, not the trustees, to direct the branches of education he shall pursue, so far as they are taught, and he is, by necessary preliminary education, qualified to pursue them in the high-school.

“It is possible that a father may have very satisfactory reasons for having his son perfected in certain branches of education to the entire exclusion of others; and so long as, in exercising his parental authority in making the selection of the branches he shall pursue, none others are affected, it can be of

no practical concern to those having the public schools in charge.

"We think the exclusion of the relator's son from the high-school, upon the ground alleged, by the respondents, unauthorized by the statute. The regulation requiring it is arbitrary and unreasonable, and cannot be enforced, but must be disregarded.

"In *Rulison et al v. Post*, 79 Ill. 567,* views were expressed in harmony with what has been here said, although the question there decided was materially different from that presented here.

"*Morrow v. Wood*, 35 Wis. 59,† presents the question of the right of a teacher to punish a pupil for refusing, under parental objection, to pursue the study of geography, and the ruling was against the right. The opinion is able and instructive, and demonstrates to our satisfaction the correctness of the conclusion."

Iowa, 1878.—*State v. Mizner*, 50 Iowa, 152.

Ada Buemer, a pupil in a public school in Iowa, carried the following notes from her father to the teacher: "Please excuse Ada afternoons, as her health will not permit her to attend all the time," and "Please excuse Ada from the algebra class, she having more lessons than she can well attend to."

* Ante, p. 41.

† Ante, p. 84.

The teacher did not excuse her, and, from her refusal to recite, a very spirited conversation was carried on between her and the teacher; and he called in a hickory stick to determine the argument. He was tried and convicted of an assault and battery. There was a conflict of testimony and opinion as to whether the punishment was for the failure to recite or for her "insolent and contemptuous conduct." All views of the case were evidently passed upon. The value of the case for this collection of decisions is found in the following extract from the opinion of the Supreme Court:

"If, therefore, the rules adopted by the teacher required that the prosecutrix should study algebra, and be in attendance during afternoons, and that proper discipline and the good of the school, as a whole, required an enforcement of the rules, we are constrained to think the mode adopted was not the proper one. Compulsory education is not yet the rule in this state, and instead of whipping the prosecutrix for failure to attend or study algebra, when both she and her father desired she should be excused, we think the defendant should have plainly said to both the prosecutrix and her father that she could not attend the school unless she was prepared to obey the rules in this respect. If a pupil attends school it must be presumed he submits himself to the rules; but that is not this case. Until compulsory education is established

we are unwilling to sanction the rule that a teacher may punish a pupil, as in this case, for not doing something the parent has requested the pupil to be excused from doing. The remedy in such case is not corporal punishment, but expulsion."

New Hampshire, 1879.—*Kidder v. Chellis*, 59 N. H. 473.

Chellis, the defendant, a teacher, was engaged by the prudential committee to teach a certain school, and presented himself to the school committee for examination. The committee-man asked him a few questions; told him he did not have time to examine him then but told him to commence the school and he would send him a certificate in a few days. The defendant commenced school Jan. 22d, 1879. He divided the largest scholars into two divisions for declaiming and writing, and fixed Jan. 31st as the time for the first division to declaim. The plaintiff, sixteen or eighteen years of age, was to be ready to speak on the 31st. At the appointed time he was not prepared to speak, and declined to do so then, or at any future time. The teacher gave him until Feb. 3d to consider the matter, and if he then complied with the requirement, very well. But if he did not he must leave school until he could. On Feb. 3d he came to school in the morning, but refused to speak, and the teacher sent him home to stay until he would. In the afternoon he returned, but persisted in his refusal to conform with the reg-

ulation. The teacher then told him he must leave, took hold of him and put him out of the school-house. The effort was sharp and vigorous, but was no more than reasonably necessary to overcome the resistance of the plaintiff.

The school committee, on the evening of Feb. 3d, after the affray, examined the defendant, and gave him a certificate, and he kept the school through according to his engagement.

The scholar on the morning and in the evening of Feb. 3d notified the teacher that, in his refusal to speak, he was acting according to the directions of his parents.

The regulation as to speaking was made by the teacher, and was oral, and no regulations were prescribed by the committee for the school.

Opinion of the court: "The statute is peremptory that no person shall be employed or paid for services as teacher until he shall produce and deliver to the prudential committee a certificate of the school committee of the town that he is qualified to instruct in the branches to be taught in the school which he is employed to teach. (G. L. c. 89, § 6.) This requirement of the statute neither the district nor the prudential committee can waive. (*Barr v. Deniston*, 19 N. H. 170.) It does not necessarily follow, however, that the plaintiff can recover by reason of what transpired at the time of the affray. The defendant was keeping a school in the school-house of the district.

He sustained to the other occupants of the house the relation of teacher, and they to him that of scholars. The daily assemblage in the school-house for nearly two weeks prior to the alleged assault was not an unlawful meeting. The defendant was occupied in the useful and highly honorable employment of giving instruction to the youth of the district. If the instruction must be held to have been given gratuitously because the school committee of the town neglected to examine him as to his qualifications and give him the proper certificate when he presented himself for examination, the business in which he was engaged was none the less useful and honorable, nor was it made thereby illegal. He was in the occupation of the school-house for the purpose of giving instruction to the scholars of the district, with the unrevoked license of the district, and of its inhabitants. Although not a public teacher by legal appointment he was a teacher in fact, and his authority to govern the school could not be contested by those who sought to avail themselves of its advantages. By placing their children under his instruction, parents, for the time being, invested him with the prerogatives of school government, and conferred upon him the power to do what was reasonably necessary to maintain order and render effective his instruction to the school, and the plaintiff's parents authorized him to require of the plaintiff obedience to such reasonable rules as were necessary for

the government and instruction of the whole school. Their directions that they did not desire him instructed in public declamation did not limit the defendant's authority as his teacher, because the referee has found that the regulation was a reasonable and useful one to the school. (The case had been referred to a referee to find the facts.) They could not require the defendant to receive their child under his instruction without conforming to his reasonable rules. The plaintiff was informed that he must submit to the rule in question by declaiming on Feb. 3d, or leave the school. By remaining, he tacitly consented to submit, and gave the defendant authority to compel obedience; or he was a trespasser, and the defendant had the right to expel him. If *Morrow v. Wood*, 35 Wis. 59 (see p. 34), sustains this action, we are unable to follow the decision in that case.

“Although the defendant was not, for all purposes, the teacher of a public school, he was a teacher of a public or private school for the purpose of governing the school as against persons who chose to be members of the school; and for any misgovernment, or maladministration in prescribing studies or requiring educational exercises the law provided ample remedies; and a refusal to obey his reasonable regulations was not a legal remedy for any wrong of which the plaintiff complains. The defendant did not expel the plaintiff, but merely suspended

him until he should comply with the regulations. Whether the educational assembly over which the defendant presided was a school in fact, whatever legal qualities it might lack—whether it was a public or a private school—the power of each parent to decide the question what studies the scholars should pursue, or what exercises they should perform, would be a power of disorganizing the school, and practically rendering it substantially useless. However judicious it may be to consult the wishes of parents, the disintegrating principle of parental authority to prevent all classification and destroy all system in any school, public or private, is unknown to the law.

“As no unnecessary force was used to remove the plaintiff from the house for non-compliance with a reasonable and useful regulation of the school, the plaintiff cannot recover, and the defendant is entitled to judgment on the report.”

NOTE.—It seems plain from a careful study of the Wisconsin case (*Morrow v. Wood*, ante, p. 34) that the Supreme Court of that state, in the consideration of rights of parents in the matter of studies in the schools, have removed the bound which had seemed fixed, by common consent, if not by the courts, to determine the relative rights of parents, pupils, and school officers.

It is a matter of some moment in the administration of common-school systems, and has merited and

received much discussion. It may be claimed from one standpoint that while the above proposition is admitted—that the decision makes a change of limits—yet the decision is not based upon law or sound reason. From another standpoint the effect or result of the decision is not only admitted, but assented to; and the decision supported as sound in both law and reason. There is a third view which admits the law and reasoning of the court, but claims that nothing new is decided—that the decision does not affect the rights and powers of school officers in general to prescribe studies as against the wishes of parents.

In support of the last view it is claimed that the decision turned upon the power of the *teacher*, rather than the right of *school officers* or *authorities*; and upon the *method of punishment* employed by the teacher in that particular case. The Supreme Court of Vermont, in the case of *Ferriter v. Tyler*, ante, p. 10, seems to take this position, and thus reviews the case: "We have carefully studied the Iowa" (should be Wisconsin) "case of *Morrow v. Wood*, before cited, and not only find nothing in conflict with the other cases decided, but that the ideas expressed by Judge Cole are in harmony with the other cases. In that case the teacher required a boy to study geography. His father, for good reasons, wanted him to devote himself to other studies, requiring all his time and strength, without geography. The boy, in obedience to his father's direction, refused to study geography, and the teacher whipped him. Hence the suit. It appears that geography was one of the studies required

by law to be taught, but there was no law requiring any scholar, or any particular description of scholars, to study it. There was no rule of the school, beside the arbitrary requirement of the teacher, which would make it the duty of the boy to pursue that study. Judge Cole says, 'The statute gives the school board power to make all needful rules and regulations for the organization, gradation, and government of the school, and power to suspend any pupil from the privileges of the school for non-compliance with the rules established by them, or by the teacher with their consent.' It does not appear, nor is it inferrible, that the school board had made a rule requiring the boy to study geography, or had given their consent to the requirement of the teacher. The question then was, whether the teacher had justifiable cause for whipping the boy. The court held that she had not, and, in the discussion, held, that on the facts in the case the father had the right to direct as to the study of geography by his son. We see no occasion for differing with the court in that case. In the course of the opinion it is said: 'It is not proposed to throw any obstacle in the way of the performance of their duties' by the school board. Again, 'We do not propose to lay down any rule which will interfere with any reasonable regulation adopted for the management and government of the public schools, or which will operate against their efficiency and usefulness. Certain studies are required to be taught in the public schools by statute. The rights of one pupil must be so exercised, undoubtedly, as not to prejudice the equal rights of others. But the parent has the right to

make a reasonable selection from the prescribed studies for his child to pursue, and this cannot possibly conflict with the equal rights of other pupils. In the present case the parent did not insist that his child should take any study outside of the prescribed course.' 'And how it can result disastrously to the proper discipline, efficiency, and well-being of the common schools, to concede the paramount right to make a reasonable choice from the studies in the prescribed course which his child shall pursue is a proposition we cannot understand.' And this, as well as all that was said by the judge, is to be taken as in a case where there was no rule as to the study of geography by the boy, except the personal arbitrary command upon him of the teacher. How this court would decide in a case involving the question of superiority between the parent and the school board, as to the pursuit of a study required by the established rule of that board, we have now no occasion to announce or intimate. Nor had that court any such question before it."

It seems here assumed that had the school board made a rule covering the point in issue, and the pupil, under the direction of his father, refused to obey the rule, and was punished by the teacher, the court of Wisconsin would have decided otherwise.

Again, it is claimed that the decision only determines that the teacher had no power to punish the boy by inflicting bodily pain for refusing to obey her command rather than the command of his father. That, instead of whipping, she should have suspended

him from the privileges of the school. This claim is supported by the reasoning of the court in the case of *State v. Mizner*, ante, p. 50.

But, turning to the whole opinion of Judge Cole in the Wisconsin case, the decision is plainly based upon a broader ground than the making of a rule, or the method of punishment, namely: "The paramount right of the parent to make a reasonable choice from the studies in the prescribed course." True, the right of the parent is determined as against the teacher, but the argument goes beyond, making no distinction between the teacher and the school authorities. Suppose the school board had made, recorded, and duly announced to teachers and pupils a rule requiring the study of geography; would the parental right to make a choice of studies be in any way affected? Would the rule operate against the parent with any more force or reason than the act of the legislature prescribing certain studies? Recurring to the opinion (ante, p. 39), after the matter last quoted by the Vermont court occurs this language: "But, considering that the study of geography was less necessary for his boy at that time than some other branches, he desired him to devote all his time to orthography, reading, writing, and arithmetic. The father stated that he thought these studies were enough for the child to take; and he said he was anxious the boy should obtain a good knowledge of arithmetic, in order that he might assist in keeping accounts. He wished to exercise some control over the education of his son, and it is impossible to say that the choice of studies which he made was unreasonable or inconsistent with the

welfare and best interest of his offspring. And how it will result disastrously to the proper discipline, efficiency, and well-being of the common schools to concede this paramount right to the parent to make a reasonable choice from the studies in the prescribed course which his child shall pursue is a proposition we cannot understand."

Here the argument rests entirely upon the right of the parent to choose, and the reasonableness of his choice. And again, "It is unreasonable to suppose any scholar who attends school can or will study all the branches taught in them. From the nature of the case some choice must be made, and some discretion be exercised as to the studies which the different pupils shall pursue. The parent is quite as likely to make a wise and judicious selection as the teacher." What force has the word "teacher" here? Why is not the father, from his knowledge of "the health, temperament, aptitude, and deficiencies of his child" (ante, p. 38) as likely to make a wise and judicious selection as the school board? The words of Judge Cole first quoted by the Vermont court, and the sentence next quoted, "It is not proposed to throw any obstacle in the way of the performance of these duties," are to be read in connection with the qualifying proposition immediately following, commencing with a very large and expressive "*But*." "*But* these powers and duties can be well fulfilled without denying to the parent all right to control the education of his children" (ante, p. 41). And it must be noticed, further, that in the remarks cited by the Vermont court as demonstrating the wish of the Wisconsin court to

avoid all conflict with the rules of the *board*, occurs a qualifying statement equally broad and distinct as the above, and introduced with the equally expressive "*But*." "But the parent has the right to make a reasonable selection from the prescribed studies for his child to pursue, and this cannot possibly conflict with the rights of other pupils." And in this connection it must be observed that it is only the "reasonable" regulation of the board with which the court will not interfere; and this expression, coupled with the assertion of the parent's right, is a broad intimation that any regulation affecting that right would not be "reasonable."

True, again, the case decides that the teacher had no right to *whip* the boy; but if the act was in contravention of a parental right, which right the decision aims to establish, what matters it whether the parental right is trespassed upon with a rattan or a note of suspension.

That the Wisconsin court has made a decision which announces the right of a parent to select the studies the child shall pursue is fully recognized and approved by the Supreme Court of Illinois in the case of *Trustees v. The People*, ante, p. 46. There the regulation was made by the school officers, and they were the defendants in the suit; furthermore, the method adopted with the pupil was not castigation, but exclusion from school. The school officers were authorized by law, "to adopt and enforce all necessary rules and regulations for the management and government of the schools; to direct what branches of study shall be taught." The court declares, with-

out any equivocation, that the school board has no power "to decide what particular branches of study, of those decided to be taught, shall be pursued by each pupil," that "no particular branch of study is compulsory upon those who attend school, but schools are simply provided by the public in which prescribed branches are taught, which are free to all within the district between certain ages," and "it is for the parent, not the trustees, to direct the branches of education" the child shall pursue. This seems to be just the case supposed by the Vermont court, involving the questions which it said were not raised in the Wisconsin case. It was decided three years after the review of the subject by the Vermont justices, though a year before the case of *State v. Mizner*.

It remains to take ground in support of, or against, the decisions of Wisconsin and Illinois which announce the right of the parent to make a selection from the list of studies prescribed by law, as against school officers and teachers. The language of the statutes of the above states is no more plain and direct, and the powers and rights granted the school officers any less than in most of the states. The argument against the assertion of the parental right, as made by the courts above named, rests upon the central, pivotal idea of public education—a system of common instruction, announced and cared for by the state, for the benefit of all the people, and therefore the state. The state recognizes the fact that its stability and perpetuity are dependent upon the virtue and intelligence of its citizens; that individual, and hence general, virtue is increased by the increase of

individual and general intelligence. To this end the state desires to secure for each child the rudiments of education. It does not take from the parent the right, or release him from the duty, to educate his child; but it warrants a measure of education to the child as against the neglect or inability of the parent, and defines the duty of the parent. The state, jealous of its own interests, will not allow parents to permit their children to grow up in ignorance. Hence, by public statute, a course of public education is prescribed supported by public taxation. It is to be presumed that the course of education defined, when one is defined, by the organic law or the legislature, is the best result of the wise deliberation of the representatives of the public having in view the best interests of the state and its citizens; and when a course is not defined, as is the case in a number of the states, but the choice is confided to certain officers or boards created by the law, the presumption is equally strong that the legislature has given to them its own powers of prescription, and that the interests of citizens and the welfare of the state will be best subserved by such exercise of the powers as they deem best. Now if a father who, by force of circumstances or simple choice, has intrusted the education of his child to the state or its lawfully appointed agents, can dictate to the state or its agents what amount, how little and how much, of the course of public instruction is necessary for the welfare of the child, and can refuse to have him take more than he desires and commands, and the school authorities are powerless, then the object of the law is frustrated; the expressed

voice of the majority is without effect against the will of one man.

It is urged, it is not intended to subvert the law or intent of the law providing for general education, but simply to allow the parent a reasonable choice of studies for his child. The word "reasonableness," then, is the bound; the reasonableness of the demand of the parent, the limit. If there is reason in the claim of the parent, the lines laid by the law must be swerved more or less according to the amount of reason. Then there is no certainty; the course of instruction in school may be dependent upon such plans as respective parents may have. The discretionary power of school officers given by law exists only in name, and the simple duty remaining is to make such course of instruction as is best and possible of the studies chosen by parents in the exercise of parental prerogative.

For where is the line of "reasonableness" to be drawn? What is a reasonable choice to-day is not to-morrow; and the choice of one man, reasonable in his case, may be unreasonable when presented by another. There was a measure of reason in the demand of the Wisconsin parent that his boy should devote extra time to arithmetic, that he might be more valuable to him, and the school boards are few that would not accede to the father's wish; and yet it seems the board, having in view the value of education to the child, might demand that he receive some knowledge of the world and its peoples through the study of geography, as well as to keep in view the assistance he was to render his parent. Suppose the father

believed his own knowledge of arithmetic was sufficient for his whole family, and desired his boy to devote his whole time to the study and practice of penmanship; or, thinking his son's head not strong enough to wrestle with common fractions, should desire him to confine his attention to grammar and spelling, which would enable him to speak and write correctly and appear well among his fellows. A man who never went to school and runs the same sawmill that his father before him did, who keeps his accounts with a piece of chalk on a slab, and cannot see the necessity or gain of his children knowing more than he does, may make a choice of studies for them based upon his own ignorance; a choice with some sprinkle of reasonableness perhaps, and yet a choice which will not enable them to take a level much above his, or that will contribute greatly to their improvement or pleasure. And the cases might be multiplied in which a father, having in mind his own interest, the health of his child, and his future work in life, would make a choice of study which would appear reasonable, and yet, in the judgment of men appointed to secure the best results of education for one and all, would not be best either for the child, the parent, or the state. To allow the wish of one man might not interfere with the welfare of the school or the course of instruction therein, but if several or all the parents should make the same demand, and they might with equal reason, and of course with equal right, it might be impossible to do any effectual or valuable work in the school.

Advocate of the father's right may say such

cases are not likely to arise. Why not as likely to arise as that a fair and prudent school board will refuse to listen to the reasonable wish of parents? The demand in each case is reasonable, and the parent makes it as of right. It is as fair to argue that several instances of reasonableness become an aggregate of unreasonableness, as to argue that a school board, chosen for their good judgment in the matter, in the exercise of lawful powers will refuse to grant the reasonable request of a father, and thereby make a woeful mistake and do a woeful wrong.

The claim of parental right, as against a right assumed by government or unfairly exercised, is one that the citizens of this country would not be slow to assert. The fact that among the great population of the states, in all the years the systems of public instruction have been in operation, but a very few cases of this character have arisen, goes to show that there has not been any serious conflict between the school officers and parents; and that such officers and their teachers have heeded the reasonable requests of parents and pupils. Is it not safer to let the matter of defining a course of study rest in the judgment and discretion of the school authorities than to submit it to the individual whims and opinions of parents, trusting rather to the good sense of the authorities to make a wise disposal of individual cases, than to announce the right of every man to set up his own wish and desire? Is it not more in accord with reason, and in support of the end and aim of public instruction? The reasoning of the court in the Maine case of *Donahoe v. Richards*, ante, p. 24, seems to meet

and overturn that of the court in the Wisconsin case as to the principles governing the power and authority given by statute to school boards and teachers as against the right of parents. Certainly no larger or more explicit grant of power was given by the Maine statute than by the Wisconsin.

The Supreme Court of New Hampshire, in the case of *Kidder v. Chellis*, ante, p. 52, directly denies the rule of law as laid down in *Morrow v. Wood*, and evidently deems it unnecessary to argue for the power of public-school officers and teachers to regulate studies as against the parental right. And that court further decides that the exercise of the authority to prescribe and enforce studies is not dependent upon the technical observance of the law in regard to the appointment of teachers and the publication of rules and regulations by the school board.

RULES IN OTHER CASES.

Massachusetts, 1866.—*Spiller v. Woburn*, 12 All. 127.

The school committee of Woburn, Mass., ordered that the schools should be opened in the morning with reading from the Bible and prayer, and that the scholars should bow their heads during the prayer. Because of some objection made to the latter portion of the order, the committee modified it, and directed that any scholar, whose parent requested it, should be excused from bowing the head. The father of a girl named Ella R. Spiller refused to request that she be excused, and ordered her not to obey that part of the order. She refused to bow

her head during prayer, and was excluded from the school until she should comply with the rule, or her parent should request her exemption. She then instituted a suit against the town. The Supreme Court decided that the rule was reasonable and proper.

Opinion: "The power of the school committee of a town to pass all reasonable rules and regulations for the government, discipline, and management of the public schools under their general charge and superintendence is clear and unquestionable. (Gen. Sts. c. 38, § 16;* *Roberts v. Boston*, 5 Cush. 198; *Sherman v. Charlestown*, 8 Cush. 160.) Equally clear is it that the committee of the town of Woburn did not exceed their authority in passing an order that the Bible should be read and prayer offered at the opening of the schools on the morning of each day. No more appropriate method could be adopted of keeping in the minds of both teachers and scholars that one of the chief objects of education, as declared by the statutes of this commonwealth, and which teachers are especially enjoined to carry into effect, is 'to impress on the minds of children and youth committed to their care and instruction the principles of piety and justice, and a sacred regard for truth.' (Gen. Sts. c. 38,

* "Every town shall, at the annual meeting, choose, by written ballots, a board of school committee, which shall have the general charge and superintendence of all the public schools in town." (Same in Public Sts., c. 44, § 21.)

§ 10; St. 1862, c. 57.) We do not mean to say that it would be competent for a school committee to pass an order or regulation requiring pupils to conform to any religious rite or observance, or to go through with any religious forms or ceremonies, which were inconsistent with or contrary to their religious convictions or conscientious scruples. Such a requisition would be a violation of the spirit of the clause in the Constitution, Pt. 1, Art. II., which provides that no one shall be hurt or molested in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience; and it would also be inconsistent with the plain intention of the legislature, in providing that no one shall be excluded from a public school on account of religious opinions (Gen. Sts., c. 41, § 9), and in requiring that the daily reading of the Bible in public schools shall be without written note or oral comment, and in providing that no pupil shall be called on to read any particular version, whose parent or guardian shall declare that he has conscientious scruples against allowing him to read therefrom. (St. 1862, c. 57.) Having in view the manifest spirit and intention of these provisions, an order or regulation, by a school committee, which would require a pupil to join in a religious rite or ceremony contrary to his or her religious opinions, or those of a parent or guardian, would be clearly unreasonable and invalid.

"But we are unable to see that the regulation with which the plaintiff was required to comply can be justly said to fall within this category. In the first place, it did not prescribe an act which was necessarily one of devotion or religious ceremony. It went no further than to require the observance of quiet and decorum during the religious service with which the school was opened. It did not compel a pupil to join in the prayer, but only to assume an attitude which was calculated to prevent interruptions, by avoiding all communication with others during the service. In the next place, the regulation did not require a pupil to comply with that part of it prescribing the position of the head during prayer, if the parent requested a child to be excused from it. This was in analogy to the provision already cited in relation to the reading of a particular version of the Bible contained in St. 1862, c. 57, and takes away all ground of objection to the reasonableness and validity of the order.

"Under these circumstances, it not appearing that the plaintiff made any objection to a compliance with the regulation, except in obedience to the will of her father, we are of opinion that her exclusion from the school was justifiable, and furnishes no ground of action."

Iowa, 1881.—*Perkins v. Directors*, 56 Iowa, 479.

The board of directors in an Iowa district made a rule as follows: "Scholars who shall be guilty of defacing or injuring any school property shall be required to pay all damage. Notice of such damage shall be sent to the parents or guardians of the pupil, and in default of payment the case shall be reported to the president of the board, who may proceed with it according to law. Scholars thus reported to the president shall not afterward be allowed to attend until payment of damages shall be made, or the case otherwise adjusted." While engaged in a game of ball, at a proper time, near the school-house, one of the boys unintentionally, and by accident, batted a ball through one of the windows of the school-house, breaking a glass of about the value of three dollars. His parents refused to pay for it. The superintendent of the school would not allow the pupil to attend, which action was ratified by the directors, and suit was brought against them. The Supreme Court gave a decision against the directors.

From opinion: "We are next to inquire whether defendants, as school directors, had authority to promulgate and enforce the rule under which the plaintiff was excluded from the school.

"It will be observed that plaintiff was guilty of no breach of discipline or of any offence against good order.

“By an accident, and without any evil purpose, he broke a window glass. The rule requires him to pay the damage done, and in default thereof authorizes the directors to exclude him from the school. We may admit that he ought to pay the damages and is liable therefor. But we think his omission to perform this duty cannot be punished by his expulsion from the school. The state does not deprive its citizens of their property, or their liberty, or of any rights, except as a punishment for a crime. It would be very harsh and obviously unjust to deprive a child of education for the reason that through accident and without intention of wrong he destroyed property of the school district. Doubtless a child may be expelled from school as a punishment for breach of discipline or for offences against good morals, but not for innocent acts.

“In this case the plaintiff was expelled, not because he broke the glass, but because he did not pay the damage sustained by the breaking. His default in this respect was no breach of good order or good morals. The rule requiring him to make payment is not intended to secure good order, but to enforce an obligation to pay a sum of money.

“We are clearly of opinion that the directors have no authority to promulgate or enforce such a rule.”

NOTE.—The law of New Jersey provides for suspension as penalty for damage to school property: “Any pupil who shall in any way cut, deface, or otherwise

injure any school-house, fences or outbuildings thereof, shall be liable to suspension and punishment, and the parents of such pupil shall be liable in damages."

SUSPENSION AND EXPULSION.

For case of expulsion for immoral practices out of school, see page 91. (8 Cush. 160.)

For case of expulsion for refusing to bow the head during prayer, see page 68. (12 All. 127.)

For cases of expulsion and suspension for tardiness and absence, see page 9 (116 Mass. 366), and page 20 (71 Mo. 628).

For cases of expulsion for refusal to study certain branches, see page 41 (79 Ill. 567), and page 33 (32 Vt. 226).

For case of expulsion for not paying for glass broken in school-house, see page 72. (56 Iowa, 479.)

For case of refusal to admit scholar because of deficiency in one study, see page 46. (87 Ill. 303.)

For case of expulsion for publishing article reflecting upon school board, see page 99. (30 Iowa, 429.)

For case where pupil was expelled for attending

social parties, contrary to rule of the school board, see page 102. (66 Mo. 286.)

For case where court intimated that suspension was the proper course to pursue, instead of whipping, where child, in obedience to parent, refuses to study certain branches, see pages 50, 122. (50 Iowa, 152.)

For case of expulsion where scholars were absent from school to attend religious services by command of parents and priest, but without consent of school committee, see page 10. (48 Vt. 444.)

For case of expulsion of Catholic child for refusal to comply with a rule requiring pupils to read in the Protestant version of the Bible, see page 24 (38 Me. 379); and for case of suspension of Catholic boy for refusing to lay aside his books during the reading from the Bible, see page 134. (95 Ill. 263.)

For case where pupil, after being expelled from school, was ejected from school building while attending a public entertainment therein, see page 86. (3 Pitts. R. 264.)

For case where boy was ejected from the school-house for using saucy and profane language to the school committee, see page 88. (41 Conn. 442.)

For case of suspension for not declaiming, see page 52. (*Kidder v. Chellis*, 59 N. H. 473.)

Massachusetts, 1870.—*Hodgkins v. Rockport*, 105 Mass. 476.

Henry Hodgkins was expelled from school by the committee of Rockport, Mass., for acts of misconduct which consisted of "whispering, laughing, acts of playfulness and rudeness to other pupils, inattention to study, and conduct tending to cause confusion and distract the attention of other scholars from their studies and recitations." Before expulsion the pupil was remonstrated with, and admonished by the teacher and members of the committee. The boy instituted a suit against the town for this exclusion from school. The Supreme Court decided that the exclusion was lawful.

From the opinion: "The sixteenth section of chapter thirty-eight of the General Statutes provides that the school committee 'shall have the general charge and superintendence of all the public schools in town.' This general power, by necessary implication, includes the power to make all reasonable rules and regulations for the discipline, government, and management of the schools, and also the power to exclude children from school for sufficient cause. (*Roberts v. Boston*, 5 Cush. 198; *Sherman v. Charlestown*, 8 Cush. 160; *Spiller v. Woburn*, 12 All. 127.) And when a scholar is guilty of misconduct which injuriously affects the discipline and management of the school, we think the law vests in the school committee the power of determining whether the welfare of the school requires his exclusion.

"They are required by law to visit the schools frequently, for the purpose of inquiring 'into the regulation and discipline of the schools, and the habits and proficiency of the scholars therein' (Gen. Sts. c. 38, § 26); and they are thus in a situation to judge, better than any other tribunal, what effect such misconduct has upon the usefulness of the school and the welfare of the other scholars; and if they exercise this power in good faith, their decision is not subject to revision by the court.

"In the case at bar, the committee, acting in good faith, excluded the plaintiff from school on account of his general persistence in disobeying the rules of the school, to the injury of the school. He was guilty of acts of misconduct which, if persisted in, it is clear, might seriously interfere with the discipline and impair the usefulness of the school. Whether they had such an effect upon the welfare of the school as to require his expulsion was a question within the discretion of the committee, and upon which their action is conclusive."

Vermont, 1874.—*Scott v. School District*, 46 Vt. 452.

A teacher in Vermont expelled from her school the son of the prudential committee, for disobedience of the rules of the school. The father, as such committee, insisted upon her taking the boy back. The teacher refused, quit the school, and at the close of the term sued to recover her salary. In this suit,

which resulted in the teacher's favor, the following principles were laid down by the Supreme Court:

"The teacher could not perform the duties of her employment without maintaining proper and necessary discipline in the school, and when all her other means for doing so failed in respect to the boy, it was her right, and might be her duty, to expel him, to save the rest of the school from being injured by his presence. It was not the duty of the teacher, under the contract, to teach the school without maintaining proper and necessary discipline in it; and if the committee insisted that she should have the boy there, when she could not have him there and the discipline too, it was equivalent to insisting that she should teach the school without the discipline, which she was not bound to do." *

Wisconsin, 1878.—*State v. Burton*, 45 Wis. 150.

A teacher in Wisconsin suspended a boy for "continued misconduct," or "general bad conduct," and the suspension was subsequently approved by the school board. In a suit brought to compel his reinstatement, the Supreme Court considered the rights and powers of teachers in matters of suspension and expulsion.

Extract from opinion: "The teacher is responsible for the discipline of his school, and for the prog-

* See Tennessee case, p. 80, and note, p. 82.

ress, conduct, and deportment of his pupils. It is his imperative duty to maintain good order, and to require of his pupils a faithful performance of their duties. If he fails to do so he is unfit for his position. To enable him to discharge these duties effectually he must necessarily have the power to enforce prompt obedience to his lawful commands. For this reason the law gives him the power, in proper cases, to inflict corporal punishment upon refractory pupils. But there are cases of misconduct for which such punishment is an inadequate remedy. If the offender is incorrigible, suspension or expulsion is the only adequate remedy. In general, no doubt, the teacher should report a case of that kind to the proper board for its action in the first instance, if no delay will necessarily result from that course prejudicial to the best interests of the school. But the conduct of the recusant pupil may be such that his presence in the school for a day or an hour may be disastrous to the discipline of the school, and even to the morals of the other pupils. In such a case it seems absolutely essential to the welfare of the school that the teacher should have the power to suspend the offender at once from the privileges of the school; and he must necessarily decide for himself whether the case requires that remedy. If he suspends the pupil, he should promptly report his action and his reasons therefor to the proper board. It will seldom be necessary for the teacher in charge

of a district school to exercise this power, because usually he can communicate readily with the district board, and obtain the direction and order of the board in the matter. But where the government of a public school is vested in a board of education (as in the present case) with a more numerous membership than district boards, and which holds stated meetings for the transaction of business, the facilities for speedy communication with the board may be greatly decreased, and more time must usually elapse before the board can act upon a complaint of the teacher. In those schools the occasions which require the action of the teacher in the first instance will occur more frequently than in the district schools. We conclude, therefore, that the teacher has, in a proper case, the inherent power to suspend a pupil from the privileges of his school, unless he has been deprived of the power by the affirmative action of the proper board."

Tennessee, 1880.—*Parker v. School District*, 5 Lea, 525.

A teacher in Tennessee published certain rules for his school, one of which was as follows: "Pupils must abstain from the common use of tobacco and ardent spirits." The school directors objected to that part in relation to tobacco, and he was employed upon the understanding and condition that the rule in relation to the use of tobacco should not be enforced on the school grounds outside of the

school-house. After some days he suspended two of the pupils for using tobacco on the school grounds outside the school-house. The directors insisted that the pupils should be restored. The teacher refused to abrogate or modify his rule in regard to tobacco and to allow the pupils to continue in school with the privilege of using tobacco on the school grounds; and the directors thereupon discharged him.

In a suit concerning the salary of the teacher it was decided by the Supreme Court that, under the provisions of the state law, the teacher could suspend but not expel, and his decision was subject to the action of the directors.

The following sections of the law were cited by the court. School directors "to suspend or dismiss pupils when the prosperity or efficiency of the school requires it." "Any teacher of a public school may, for sufficient cause, suspend pupils from attendance on the schools until the case is decided by the board of school directors, which shall be with as little delay as possible."

Extract from opinion: "From these provisions [recited above] it is apparent that a teacher of a public school, while he has the right to suspend a pupil until the case is decided by the directors, cannot, without the concurrence of the directors, permanently deprive a pupil, within the ages, and residing within the district, of the privileges of the school.

The power to dismiss a pupil is alone given to the directors, and their decision must control.

"The refusal of a teacher to receive and admit to the privileges of the school a pupil whom the directors decide shall be received, or an attempt upon the part of the teacher to dismiss a pupil whom the directors decide shall not be dismissed, is, we think, such 'improper conduct' as would authorize the directors to dismiss the teacher, for this would be to deny to the pupils the privileges of the public school secured to them by the law.*

"It is unnecessary for us to express any opinion as to the wisdom or propriety of the rule in regard to the use of tobacco, about which the controversy arose. It is enough to say that this and all questions of a similar character are by the law intrusted to the wisdom and discretion of the school directors, and their decision must in general be conclusive. If we could in any case control their discretion, the present is not a case for the exercise of such power."

* The rule as thus broadly asserted apparently conflicts with that expressed in the Vermont case (p. 77), but it is to be noted that the Tennessee case turned upon the provision of the statute cited in the opinion; and the real issue between the teacher and school board was concerning the adoption of a by-law, and the teacher violated a condition of his employment in enforcing a rule annulled by them.

Massachusetts, 1882.—*Davis v. Boston*, 133 Mass. 103.

Joseph F. Davis was a pupil in a grammar school in the city of Boston. He refused to submit to corporal punishment for disobedience and impertinence in school, and was ordered by his teacher to go to the principal of the school; he went home instead, but returned after several days and offered to submit to punishment; after the teacher commenced to punish, the boy refused to submit to further punishment, and, as before, was ordered to report to the principal, and, as before, went home instead; this was repeated several times. On the last occasion the teacher told him to go home, and told him he could not return to the school until he had taken his punishment. The boy and his father then had an interview with the principal, to whom the boy said he would receive his punishment, but could not say he was willing to receive it. The principal told the boy to go home, and that he would not have him in school unless he said he was willing to be punished. The father then requested of the principal the reasons for excluding his boy, and received the following reply from the principal: "In response to your request why your boy 'has been excluded from school,' I have to say what you already know: (1) that he has not been absolutely excluded from school; and (2) that I am willing to receive the boy when he comes in an obedient spirit

and willing to receive his punishment, to be given for impertinence to his teacher. Allow me further to state that, if you are dissatisfied with my methods of discipline, you can properly appeal to the school committee."

In an action against the city for unlawful exclusion from school the Superior Court directed a verdict for the defendant. The boy then appealed to the Supreme Court, where the judgment of the lower court was affirmed. It was held the boy was not expelled from school. It was also decided that teachers may suspend pupils, but the expulsion rests with the school authorities.

Opinion : "This action is brought under the statute which provides that a child unlawfully excluded from any public school shall recover damages therefor in an action of tort, to be brought in the name of such child, by his guardian or next friend, against the city or town by which such school is supported." (Gen. Sts. c. 41, § 11 ; Pub. Sts. c. 47, § 12.)

"The evidence, viewed in the light most favorable to the plaintiff, tended to show that he was guilty of several acts of disobedience and insubordination in the school, for which the teacher sent him to his home ; that afterwards his father returned with him, and had an interview with the principal of the school, in which the principal said that the school committee would not allow him to punish the plaintiff unless he said that he was willing to be pun-

ished, and, upon the plaintiff's refusing to say so, he told him 'to go home, and that he would not have him in school unless he said he was willing to be punished.' The father afterwards requested the teacher to state the grounds upon which the boy had been 'excluded from school;' and received an answer, which is set forth in the report. Thereupon, without any appeal to the school committee, this action was brought.

"We are of opinion that the Superior Court rightly ruled that the action could not be maintained. The intention of the statute is to give a remedy to a child who is unlawfully excluded from school by the proper authorities, who in this matter represent the city or town. A teacher has no authority to exclude a child from school, unless he acts under the order of the school committee, of which there was no evidence in this case. The laws vest in the school committee the charge and superintendence of the schools. They alone have the right to exclude any child from school.

"If a teacher sends a child home from school, there is no hardship in requiring the parent to appeal to the committee. Unless the teacher is acting under some order of the committee, this is the only way of ascertaining whether the proper authorities, for whose action the city or town is made responsible, have excluded the child. On the other hand, to hold that whenever a teacher sends a child home as

a punishment the parent may treat it as an expulsion and sue the city or town, would lead to vexatious litigation and impair the discipline and usefulness of the schools. (*Spear v. Cummings*, 23 Pick. 224; *Sherman v. Charlestown*, 8 Cush. 160; *Hodgkins v. Rockport*, 105 Mass. 475; *Learock v. Putnam*, 111 Mass. 499.)

"The plaintiff in this case, therefore, has failed to show an expulsion from school for which the city is liable under the statute."

Pennsylvania, 1870.—*Hughes v. Goodell*, 3 Pitts. Rep. 264.

The following case is reported in the Pennsylvania books, although not a decision of the court of last resort of that state. A decision, however, of so righteous a character as to merit a place here, and the approval of students and their lady friends everywhere.

A student in a state normal school was, for some not very grievous matter, expelled by the principal from that school and all the normal schools of the state, no matter where situated, and for all time to come. Some time after, an exhibition was given by the school, in the school building, to which all the public were invited and tickets were sold. On the evening of the exhibition the expelled student and a lady friend purchased tickets and were admitted to the hall, taking seats near the centre thereof. About the time the hall was filled the principal and assist-

ants forcibly put the young man out of the building and out of the school grounds. He then invoked the law to give him damages against them, and was successful.

From opinion : " While the teachers or directors may expel a scholar from the school for sufficient reasons, and deprive him of its advantages, it does not follow, by any means, that they can inflict a perpetual disability upon the offending student. If he is afflicted with a contagious disease, or possesses such a bad moral character as to endanger the health or pollute the morals of those with whom he comes in contact, he may, from motives of public policy, be excluded from their association.

" But for a technical violation of school regulations, while he may be expelled from the school, he cannot be further punished by its guardians by the infliction of disabilities in derogation of his rights as a citizen. . . .

" Now, to say that a student expelled from a school for disobedience to some municipal regulation should be excluded from attending a prayer-meeting or public lecture in the school-house or college premises for all time to come, without any evidence of improper conduct or suspicion of improper purposes, would be an exercise of tyranny over his private rights not vested in the trustees, directors, or professors of our educational institutions.

"A scholar may forfeit his rights to a place in the school or college by the violation of some rule that involves no moral turpitude. And, so far as appears, that was the condition of this plaintiff. If the rule of right in the professors be as great as is claimed in this case, he might have been sued in trespass or forcibly expelled for attending the funeral of his mother upon the premises ten years after his expulsion."

Connecticut, 1874.—*Peck v. Smith*, 41 Conn. 442.

A district-school committee-man in Connecticut went to a school-house to build a fire. He observed some chalk-marks on the funnel, and asked a large boy, sixteen years of age, who was present with three or four younger pupils, if he knew who made them. The boy replied, "I did." The committee-man asked, "What for?" The boy answered, "For nothing but fun; for no hurt and for no good." The committee then asked him if he could not get off the marks better than he had done. The boy replied, in a saucy way, that he "supposed that he could take a hoe or a scraper and scratch them off a little more; that the teacher was satisfied with it." The committee then called the boy saucy and impudent, and told him he wanted no more of his "lip." The boy gave answer that, in his opinion, the committee-man was the saucier of the two. He advanced towards the boy with hand raised as

if to strike him, when the boy began to swear, and "dared him" to strike. He then told the boy he must stop swearing. The boy replied that he would not, for him or any "G—d d—n m—n," and asked the committee-man if he desired him to leave school. The committee-man told him he did not, but wanted him to remain and behave himself. The boy continuing to swear, he was told to take his things and go. Not seeming to haste, he was told to hurry up. He responded that he wouldn't go until he got ready, whereupon the committee-man took hold of his shoulder and put him out of the school-house, using sufficient force for the purpose. The committee-man was then sued for damages. The Supreme Court decided that the action of the committee-man was justified; and that it was not an expulsion from the school.

From opinion: "From the facts detailed in the motion the act of the defendant in removing the plaintiff from the school-house is abundantly justified, and may properly be commended. The school for the day had not commenced. The defendant, being at the school-house performing certain duties connected with the school, called the attention of the plaintiff to certain acts, not specially culpable in character, which he acknowledged he had committed. His bearing and manner were insulting and offensive, and the language in which he indulged was grossly profane. Such language, reprehensible

at all times, should not have been allowed to pass with impunity from a school-boy of the older class, within the walls of a school-house, in the presence and hearing of younger pupils. After being told to leave he so conducted that it was proper to remove him, no unnecessary force being used to attain that object. . . .

"All the force used against the plaintiff is fully justified, and the judgment for the defendant should not be disturbed. The plaintiff stands here on his legal rights, and is certainly entitled to enjoy them, but his position on this record is such that he should have them in strict measure, not running over." *

* A teacher in Vermont having forbidden a boy to further attend school unless he would make apology for certain misconduct, and he refusing to leave or apologize, sent for the committee, who ordered the boy to apologize or leave. The boy would not leave, and the committee attempted to remove him, when another scholar interfered. The last-mentioned boy was found guilty of an assault and battery upon the committee. (*State v. Williams*, 27 Vt. 755.) This case and the Connecticut case, *Peck v. Smith* (p. 88), are the only ones bearing upon the right of school officials to act in person in the schoolroom.

The following opinion of an eminent educational writer upon this point is deemed worthy of insertion here. "During the period of visitation the committee have the entire control of the school. For the time being it is their school and the teacher is their servant. They may decide what classes shall be called upon to perform exercises, and in what

RIGHTS AND POWERS OVER PUPILS FOR ACTS COMMITTED OUT OF SCHOOL.

Massachusetts, 1851. — *Sherman v. Charlestown*, 8 Cush. 160.

A girl named Charlotte A. Sherman was expelled from the schools by the school committee of Charlestown, Mass., for acts of immorality and licentiousness committed outside the school. The laws of that state provide that any child unlawfully excluded from school may have an action for damages against the city or town supporting the school. The girl above named instituted an action, but failed therein, the Supreme Court deciding that she was lawfully excluded.

From the opinion: "The argument for the plaintiff is, that it is the right of every child between seven and sixteen to go to the public school for instruction; that this right is absolute and inde-

studies. They may direct the teacher to conduct the examination, or may conduct it wholly themselves, or they may combine both methods. In fine, they may dismiss the teacher for the hour, and pursue the examination in his absence. . . .

"Should any scholar misbehave himself, or prove refractory or contumacious to the committee, while they are engaged in examining the school, it is presumed they have an authority to suspend, to expel, or to punish on the spot, in the same way that the teacher may do in case of like misconduct committed against himself." — (Horace Mann, Sec. Mass. Board Ed., 10th Rep. p. 183.)

feasible; that if a young person, male or female, sustains a bad moral character, and is guilty of gross acts of notorious misconduct, out of school, provided there is no violation of the rules of the school, and no misconduct in school, such pupil cannot be rightfully excluded for any cause, and of course every exclusion must be wrongful. If such were the intent of the legislature, it is strange that they should have used such a significant qualifying term as that of 'unlawfully,' implying that there might be a lawful exclusion from which no such consequence would follow.

"On general principles it would seem strange if, in the establishment of such a great public institution as that of the public schools, in the benefits of which the whole community has so deep and vital an interest, there were no power vested anywhere sufficient to protect the schools thus established from the noxious influence of any one whose presence and influence would be injurious to the whole, and subversive of the purposes manifestly contemplated by their establishment. But the court are of opinion that the schools have not been left by the law without reasonable protection in this respect; and that a power is vested in the general school committee, or the master, with their approbation and direction, to exclude a pupil, although within the prescribed age of seven and sixteen, for and sufficient cause; and that the notorious

immoral propensities, practices, and habits of any one claiming admission as a pupil, if proved to the satisfaction of the committee, do constitute a good and sufficient cause for such exclusion.

“This power is rather to be drawn from the general provisions of the law on this subject, and their application to the subject-matter, than from any specific enactment. Such authority must, from the necessity of the case, be conferred in general terms. . . .

“In the first place, it is obvious, indeed, it is strenuously argued in behalf of the plaintiff, that these schools are established for the benefit of all the inhabitants. The enjoyment of this benefit is therefore a common, not an exclusive personal, right; then, like other common rights, that of way, for instance, it must be exercised under such limitations and restrictions that it shall not interfere with the equal and co-extensive rights of others. Take the case of contagious disease: can it be doubted that the presence of a pupil infected could be lawfully prohibited, not for any fault or crime, or wrong conduct, but simply because his attempt to insist upon his right to attend, under such circumstances, would be dangerous and noxious, and so an interruption of the equal and common right? It seems to be admitted—if not, it could hardly be questioned—that for misconduct in school, for disobedience to its reasonable regulations, a pupil may be excluded.

Why so? There is no express provision in the law authorizing such exclusion. It results by necessary implication from the provisions of law requiring good discipline. It proves that the right to attend is not absolute and unqualified, but one to be enjoyed by all under reasonable conditions.

“But it is argued, that though good discipline may be maintained within the school, yet the master and the committee have no right to look beyond the walls of the school, to take notice of the conduct of its pupils. We cannot perceive the force of this distinction, pressed to the extent to which the argument attempts to carry it. Truancy is a fault committed wholly beyond the precincts of the school, yet no example is more contaminating, no misconduct more subversive of discipline. May not an incorrigible truant be expelled, not as a punishment merely, but as a protection to others from injurious example and influence. Children of both sexes, and of various ages, capacities, and susceptibilities must be thrown together on their way to and from school, at their amusements out of school-hours, under such circumstances as to exert a powerful influence on each other.

“The power, in the last resort, we think, is vested in the school committee. By Rev. Sts. c. 23, § 10, the inhabitants of every town are required to choose by ballot a school committee, who shall have the general charge and superintendence of all

the public schools in such town. In some respects their duties are specially prescribed ; in others they result from the general power of superintendence and visitation. . . .

“Supposing, then, that the school committee have power, upon a proper occasion, to exclude a pupil, we can have no doubt that open, gross immorality in a female, manifested by licentious propensities, language, manners, and habits, amounting even to actual prostitution, although not manifested in the school, are a sufficient ground on which to prohibit her attending the public school. . . .

“It must be considered that the power of all teachers of schools, and of the committees or other managers under whose direction they act, is a parental authority, to be exercised for the best good of the whole. It was said in the argument that if the plaintiff had violated the laws of the country, being of an age to be responsible for her conduct, she was liable to be prosecuted and punished, before the tribunals of justice. Suppose she was so liable, she was not the less unfit to be the member of a public school. The two powers are vested and are to be exercised *diverso intuitu*, the one to punish offences against the law, the other to maintain the purity and discipline of the school, and secure the great public objects for which it was established. The court are therefore satisfied that, upon proof of the facts tendered by the defendants, the school

committee were justified in excluding the plaintiff, and that such exclusion was not wrongful."

Vermont, 1859.—*Lander v. Seaver*, 32 Vt. 114.

Peter Lander, Jr., aged about eleven, attended a school in Burlington, Vt., of which a man named A. B. Seaver was teacher. One day, about an hour and a half after the close of the school in the afternoon, and after he had returned to his home, and while driving his father's cow from the pasture by the teacher's house, Lander called the teacher "old Jack Seaver." This language was used in the presence of some fellow-pupils and within the hearing of Seaver. The next morning after the school was opened the teacher reprimanded Lander for using the insulting language the evening before, and then whipped him with a small rawhide. The boy then brought action of trespass against the teacher for assault and battery.

From opinion: "The first question presented is, has a schoolmaster the right to punish his pupils for acts of misbehavior committed after the school has been dismissed, and the pupil has returned home and is engaged in his father's service?

"It is conceded that his right to punish extends to school-hours, and there seems to be no reasonable doubt that the supervision and control of the master over the scholar extend from the time he leaves home to go to school till he returns home from

school. Most parents would expect and desire that teachers should take care that their children, in going to and returning from school, should not loiter or seek evil company, or frequent vicious places of resort; but in this case, as appears from the bill of exceptions, the offence was committed an hour and a half after the school was dismissed, and after the boy had returned home and while he was engaged in his father's service. When the child has returned home, or to his parent's control, then the parental authority is resumed and the control of the teacher ceases, and then, for all ordinary acts of misbehavior, the parent alone has the power to punish. It is claimed, however, that in this case the boy, "while in the presence of other pupils of the same school, used towards the master and in his hearing contemptuous language, with a design to insult him, and which had a direct and immediate tendency to bring the authority of the master over his pupils into contempt, and lessen his hold upon them and his control over the school. This, under the charge of the court, must have been found by the jury.

"This misbehavior, it is especially to be observed, has a direct and immediate tendency to injure the school, to subvert the master's authority, and to beget disorder and insubordination. It is not misbehavior generally or towards other persons, or even towards the master in matters in no way connected with or affecting the school. For

as to such misconduct, committed by the child after his return home from school, we think the parents, and they alone, have the power of punishment.

“But where the offence has a direct and immediate tendency to injure the school and bring the master’s authority into contempt, as in this case, when done in the presence of other scholars and of the master, and with a design to insult him, we think he has the right to punish the scholar for such acts if he comes again to school.

“The misbehavior must not have merely a remote and indirect tendency to injure the school. All improper conduct or language may perhaps have, by influence and example, a remote tendency of that kind. But the tendency of the acts so done out of the teacher’s supervision, for which he may punish, must be direct and immediate in their bearing upon the welfare of the school, or the authority of the master and the respect due to him. Cases may readily be supposed which lie very near the line, and it will often be difficult to distinguish between the acts which have such an immediate and those which have such a remote tendency. Hence each case must be determined by its peculiar circumstances.

Acts done to injure or deface the schoolroom, destroy the books of scholars, or the books or apparatus for instruction, or the instruments of pun-

ishment of the master; language used to other scholars to stir up disorder and insubordination, or to heap odium and disgrace upon the master; writings and pictures placed so as to suggest evil and corrupt language, images, and thoughts to the youth who must frequent the school—all such or similar acts tend directly to impair the usefulness of the school, the welfare of the scholars, and the authority of the master. By common consent and by the uniform custom in our New England schools the master has always been deemed to have the right to punish such offences. Such power is essential to the preservation of order, decency, decorum, and good government in schools."

Iowa, 1870.—*Murphy v. Directors*, 30 Iowa, 429.

The directors of a district in Iowa made a visit to a school, and, after the close of an exercise in rhetoric, made remarks commending and criticising what in their judgment deserved. A few days afterwards one of the pupils, a boy named Murphy, wrote and had published in a newspaper an article which, it was alleged, held the directors up to ridicule, was impudent, scandalous, and tended to impair the authority and usefulness of the board. The board, learning that said article was creating insubordination in the school and inciting disregard of their authority in other pupils, directed the teacher to suspend Murphy until such time as he would

apologize. The boy instituted action against the directors, and was successful.

From opinion: "... And this question itself rests upon the extent of the power conferred by statute upon the boards of school directors in respect to the suspension of pupils from the privileges of the schools. Our statute provides that the directors shall have power to dismiss any pupils from school *for gross immorality or for persistent violation of the regulations of the school*, and to readmit them, etc. (Rev. § 2054), and it is also made their duty to aid the teachers in establishing and enforcing rules for the government of the schools. (Laws of 1862, c. 172, § 27.)

"The answer in this case does not aver that this plaintiff was guilty of, or even charged with, gross immorality or the violation of any regulation of the school; nor is it averred that the article plaintiff is charged with having written and caused to be published was immoral or done in violation of any regulation of the school. The statute does not authorize the board of directors to *suspend* pupils for acts tending to destroy the peace and harmony of the school, or inciting insubordination in others, or for ridicule of the directors, in the absence of any regulation prohibiting such acts. And while we would not interfere with the action of the board within the range of their jurisdiction and legal discretion, we cannot sanction an exercise of authority not con-

ferred by statute, or the enforcement of penalties essentially *ex post facto*, under the guise of sound discretion. When proper regulations for the government of the school are made and brought to the knowledge of the pupils, they may be held to the penalties for their violation; but for the board to visit the severest penalty within their power upon a pupil for an act out of school not prohibited either expressly or by implication, even by a general regulation, it is at variance with both the letter and spirit of our laws." *

* But in a later case in Iowa, hereinbefore reported (ante, p. 3, 31 Iowa, 562), where expulsion from school was directed for violation of rule in relation to absence and tardiness, the following rule was laid down and the Vermont case cited in support of it: "If the effect of acts done out of school-houses reach within the schoolroom during school-hours, and are detrimental to good order and the best interests of the pupils, it is evident that such acts may be forbidden. Truancy is a fault committed away from school. Can it be pretended that it cannot be reached for correction by the school board and teachers? A pupil may engage in sports beyond school that will render him unfit to study during school-hours. Cannot these sports be forbidden? The view that acts, to be within the authority of the school board and teachers for discipline and correction, must be done within school-hours, is narrow and without regard to the spirit of the law and the best interests of our common schools. It is in conflict, too, with authority. See upon this point *Lander v. Seaver*, 32 Vt. 114; *Sherman v. Charlestown*, 8 Cush. 160. The doctrine we have above endeavored to state is, in these cases, distinctly announced."

Missouri, 1877.— *Dritt v. Snodgrass*, 66 Mo. 286.

The school directors of the town of Tipton, in Missouri, made a rule that no pupil should attend social parties during the school term. A boy named Dritt, with the permission of his father and mother, attended an evening party composed of the young people of the town. And it was alleged their conduct "was strictly innocent, inoffensive, and moral, tending only to social culture." For thus attending the party, in violation of the rule, he was expelled from school. He then sued the directors, and it was held by the Supreme Court that, while he could not maintain an action against the directors because they had not acted maliciously, they had exceeded their authority in making the rule.

From opinion: "The directors of a school district are invested with the power and authority to make and execute all needful rules and regulations for the government, management, and control of such school as they may think proper, not inconsistent with the laws of the land. Under the power thus conferred the directors are not authorized to prescribe a rule which undertakes to regulate the conduct of the children within the district, who have a right to attend the school, after they are dismissed from it and remitted to the custody and care of the parent or guardian. They have the unquestioned right to make needful rules for

the control of the pupils while at school, and under the charge of the person or persons who teach it, and it would be the duty of the teacher to enforce such rules when made. While in the teacher's charge the parent would have no right to invade the schoolroom and interfere with him in its management. On the other hand, when the pupil is released, and sent back to his home, neither the teacher nor directors have the authority to follow him thither and govern his conduct while under the parental eye.

"It certainly could not have been the design of the legislature to take from the parent the control of his child while not at school and invest it in a board of directors and teacher of a school. If they can prescribe a rule which denies to the parent the right to allow his child to attend a social gathering, except upon pain of expulsion from a school which the law gives him the right to attend, may they not prescribe a rule which would forbid the parent from allowing the child to attend a particular church, or any church at all, and thus step in, *in loco parentis*, and supersede entirely parental authority? For offences committed by the scholar while at school, he is amenable to the laws of the school; when not at school, but under the charge of the parent or guardian, he is answerable alone to him.

"A person teaching a private school may say upon what terms he or she will accept scholars, and

may demand, before receiving a scholar to be taught, that the parents shall surrender so much of his or her parental authority as not to allow the scholar, during the term, to attend social parties, balls, theatres, etc., except on pain of expulsion. This would be a matter of contract, and no one has a right to send a scholar to such a school except on the terms prescribed by those who teach it.

“This is not so in regard to public schools, which every child within school age has a right, under the law, to attend, subject, while so attending, to be governed by such needful rules as may be prescribed. When the schoolroom is entered by the pupil the authority of the parent ceases and that of the teacher begins; when sent to his home the authority of the teacher ends and that of the parent is resumed. For his conduct when at school he may be punished or even expelled, under proper circumstances; for his conduct when at home he is subject to domestic control. The directors, in prescribing the rule that scholars who attended a social party should be expelled from school, went beyond their power and invaded the right of the parent to govern the conduct of his child when solely under his charge.”

DECISIONS IN RELATION TO CORPORAL PUNISHMENT.

North Carolina, 1837.—*State v. Pendergrass*, 2 Dev. & Batt.
365.

A lady teacher in North Carolina, after mild treatment had failed, whipped one of her young pupils with a switch, leaving marks upon the body; which marks, however, disappeared in a few days. The teacher was indicted and tried for assault and battery. The following opinion of the Supreme Court, sustaining her action, is considered as defining the extreme limit of the teacher's authority as to bodily punishment.

Opinion: "It is not easy to state with precision the power which the law grants to schoolmasters and teachers with respect to the correction of their pupils. It is analogous to that which belongs to parents, and the authority of the teacher is regarded as a delegation of parental authority. One of the most sacred duties of parents is to train up and qualify their children for becoming useful and virtuous members of society; this duty cannot be effectually performed without the ability to command obedience, to control stubbornness, to quicken diligence, and to reform bad habits; and to enable him to exercise this salutary sway he is armed with the power to administer moderate correction, when he shall believe it to be just and necessary. The teacher is the substitute of the parent; is charged

in part with the performance of his duties, and in the exercise of those delegated duties is invested with his power.

“The law has not undertaken to prescribe stated punishments for particular offences, but has contented itself with the general grant of the power of moderate correction, and has confided the gradation of punishments, within the limits of this grant, to the discretion of the teacher. The line which separates moderate correction from immoderate punishment can only be ascertained by reference to general principles. The welfare of the child is the main purpose for which pain is permitted to be inflicted. Any punishment, therefore, which may seriously endanger life, limbs, or health, or shall disfigure the child, or cause any other permanent injury, may be pronounced in itself immoderate, as not only being unnecessary for, but inconsistent with, the purpose for which correction is authorized. But any correction, however severe, which produces temporary pain only, and no permanent ill, cannot be so pronounced, since it may have been necessary for the reformation of the child, and does not injuriously affect its future welfare.

“We hold, therefore, that it may be laid down as a general rule, that teachers exceed the limits of their authority when they cause lasting mischief; but act within the limits of it when they inflict temporary pain.



“ When the correction administered is not in itself immoderate, and therefore beyond the authority of the teacher, its legality or illegality must depend entirely, we think, on the *qui animo* with which it was administered. Within the sphere of his authority the master is the judge when correction is required, and of the degree of correction necessary; and, like all others intrusted with a discretion, he cannot be made penally responsible for error of judgment, but only for wickedness of purpose. The best and wisest of mortals are weak and erring creatures, and in the exercise of functions in which their judgment is to be the guide cannot be rightfully required to engage for more than honesty of purpose and diligence of exertion. His judgment must be *presumed correct*, because he is *the judge*, and also because of the difficulty of proving the offence, or accumulation of offences, that called for correction; of showing the peculiar temperament, disposition, and habits of the individual corrected; and of exhibiting the various milder means that may have been ineffectually used before correction was resorted to.

“ But the master may be punishable when he does not transcend the powers granted, if he grossly abuse them. If he use his authority as a cover for malice, and, under pretence of administering correction, gratify his own bad passions, the mask of the judge shall be taken off, and he will stand amenable

to justice as an individual not invested with judicial power.

“ We believe that these are the rules applicable to the decision of the case before us. If they be, there was error in the instruction given to the jury, that if the child was whipped by the defendant so as to occasion the marks described by the prosecutor the defendant had exceeded her authority, and was guilty as charged. The marks were all temporary, and in a short time all disappeared. No permanent injury was done to the child. The only appearances that could warrant the belief or suspicion that the correction *threatened* permanent injury were the bruises on the neck and the arms; and these, to say the least, were too equivocal to justify the court in assuming that they did threaten such mischief. We think that the instruction on this point should have been, that unless the jury could clearly infer from the evidence that the correction inflicted had produced, or was in its nature calculated to produce, lasting injury to the child, it did not exceed the limits of the power which had been granted to the defendant. We think, also, that the jury should have been further instructed, that however severe the pain inflicted, and however, in their judgment, it might seem disproportionate to the alleged negligence or offence of so young and tender a child, yet if it did not produce or threaten lasting mischief it was their duty to acquit the defendant; un-

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less the facts testified induced a conviction in their minds that the defendant did not act honestly in the performance of duty according to her sense of right, but, under the pretext of duty, was gratifying malice.

“We think that rules less liberal towards teachers cannot be laid down without breaking in upon the authority necessary for preserving discipline and commanding respect; and that although these rules leave it in their power to commit acts of indiscreet severity with legal impunity, these indiscretions will probably find their check and correction in parental affection and in public opinion; and, if they should not, that they must be tolerated as a part of those imperfections and inconveniences which no human laws can wholly remove or redress.”

Vermont, 1846.—*Hathaway v. Rice*, 19 Vt. 102.

A Vermont schoolmaster was charged with gross abuse of one of his scholars by beating with clubs, sticks, fists, etc. The teacher demurred, as it is termed in legal phrase, to the declaration or statement of injury of the plaintiff, relying by his demurrer upon his office of schoolmaster; that the punishment was inflicted by him as such, and was moderate, not proving to the court the real facts in justification. This, under a rule of legal pleading, was admitting the truth of plaintiff's charge, and

defending only upon the point that because he was a teacher he was not liable. The Supreme Court overruled his demurrer, and in course of the opinion say :

“ We are brought, then, to the question, whether a sufficient justification is disclosed for all that is alleged against the defendant. The plea is based upon the right of a schoolmaster to correct his scholar, a right which has always been practically and judicially sanctioned. But it rests upon similar ground as the right to correct a child or servant, and the chastisement must not exceed the limits of a moderate correction. (1 Hawk. P. C. 130 ; 1 Stephen’s N. P. 219.) And though courts are bound, with a view to the maintenance of necessary order and decorum in schools, to look with all reasonable indulgence upon the exercise of this right, yet whenever the correction, as confessed by the pleadings or as proved on trial, shall appear to have been clearly excessive and cruel, it must be adjudged illegal.”

Maine, 1847.—*Stevens v. Fassett*, 27 Me. 266.

In a school in Maine a pupil, a large boy over twenty-one years of age, who had been permitted to occupy the teacher’s desk, refused to leave it. The Supreme Court decided that sufficient force could be used by the master to get possession of his chair and desk, and he could ask assistance of others without the direction or knowledge of the commit-

tee. The following general principles concerning corporal punishment, and expressing the law as laid down by the common-law writers cited therein, are taken from the opinion.

“The right of the parent to keep the child in order and obedience is secured by the common law. He may lawfully correct his child, being under age, in a reasonable manner, for this is for the benefit of his education. He may delegate also a part of his parental authority, during his life, to the tutor or schoolmaster of his child, who is then *in loco parentis*, and has such portion of the power of the parent committed to his charge—viz., that of restraint and correction—as may be necessary to answer the purpose for which he is employed. (1 Black. Com. 453, 454; 1 Hale’s P. C. 473, 474.) ‘The rights of parents [over their children] result from their duties. As they are bound to maintain and educate their children, the law has given them the right to such authority; and, in support of that authority, a right to the exercise of such discipline as may be requisite for the discharge of their sacred trust.’ ‘The power allowed by law to the parent over the person of the child may be delegated to a tutor or instructor, the better to accomplish the purposes of education.’ (2 Kent’s Com. 169, 170.) Although the town school is instituted by the authority of the statute, the children are to be considered as put in charge of the instructor for the same pur-

es of the peace, it becomes a matter of public policy to punish the offender. If the law in such cases is properly administered, those whose feelings are outraged will have no apology for taking redress into their own hands; they will peaceably abide the adjudication of the courts. If, on the contrary, the law is loosely and indulgently administered, the tendency is to stimulate the aggrieved to seek personal redress. As a matter of public policy, courts and juries should, therefore, hold a strong and stern hand over teachers who abuse their sacred and responsible position."

Massachusetts, 1855.—*Com. v. Randall*, 4 Gray, 36.

Alonzo D. Randall, teacher of a school in Palmer, Mass., punished a girl with a ferule for being obstinate, telling falsehoods, and for using insolent language before and during the punishment. The teacher ceased punishing when the girl acknowledged her fault, asked to be forgiven, and promised better behavior. The teacher was tried for an assault and battery and found guilty in the lower court. In that court he asked the judge to instruct the jury as follows: "That a school teacher is amenable to the laws in a criminal prosecution for punishing a scholar only when he acts *malo animo*, from vindictive feelings, or under the violent impulses of passion or malevolence; he is not liable for errors of opinion or mistakes of judgment merely,

provided he is governed by an honest purpose of heart to promote, by the discipline employed, the highest welfare of the school and the best interest of the scholar; that he is liable in a criminal prosecution for punishing a scholar only when the amount of punishment inflicted is more than adequate to subdue the scholar and secure obedience to the rules of the school."

The judge refused to instruct the jury as above requested, but instructed them as follows: "That a teacher had a right to inflict corporal punishment upon a scholar; that the case proved was one in which such punishment might properly be inflicted; that the instrument used (a ferule) was a proper one; that in inflicting corporal punishment a teacher must exercise reasonable judgment and discretion, and must be governed, as to the mode and severity of the punishment, by the nature of the offence, by the age, size, and apparent powers of endurance of the pupil; that the only question in this case was whether the punishment was excessive and improper; that if they should find the punishment to have been reasonable and proper the defendant could not be deemed guilty of an assault and battery; but if, upon all the evidence in the case, they should find the punishment to have been improper and excessive, the defendant might properly be found guilty upon this complaint."

The teacher was dissatisfied with this ruling, and

carried the case to the Supreme Court, where the ruling was sustained.

From opinion: "The instructions given tended to justify the defendant in punishing his pupils with greater severity than is consistent with a just and humane exercise of the authority conferred on him by law. To say the least, they were sufficiently favorable to the defendant. If, in inflicting punishment upon his pupil, he went beyond the limit of moderate castigation, and, either in the mode or degree of correction, was guilty of any unreasonable and disproportionate violence or force, he was clearly liable for such excess in a criminal prosecution. (1 Hawk. c. 60, § 23; 1 Russell on Crimes [7th Amer. ed.], 755; Bac. Ab. Assault and Battery, C.) It is undoubtedly true that, in order to support an indictment for an assault and battery, it is necessary to show that it was committed *ex intentione*, and that if the criminal intent is wanting the offence is not made out. But this intent is always inferred from the unlawful act. The unreasonable and excessive use of force on the person of another being proved, the wrongful intent is a necessary and legitimate conclusion in all cases where the act was designedly committed. It then becomes an assault and battery, because purposely inflicted without justification or excuse. Whether, under all the facts, the punishment of the pupil is excessive must be left to the jury."

Tennessee, 1859.—*Anderson v. State*, 3 Head's R. 455.

While the teacher in a Tennessee school was hearing a class, one of the scholars, a small boy named Layne, spoke out and said, "Four and one make five," in a low tone of voice. The teacher inquired, "Who spoke out?" Layne answered that he did. The teacher called him up, and told him to stand until the class was through. The teacher asked him what he spoke out for. He said he spoke before he thought, and commenced crying, and said he would do so no more. The teacher then told him to pull off his coat; that no excuse would do. He pulled off his coat. He then hit him about a dozen licks with a switch about as large as his thumb or finger, and two or three feet long. The little boy never had attended the school until the day before. The teacher was found guilty of assault and battery, and the conviction was sustained by the Supreme Court.

From opinion: "Upon these facts the defendant was clearly guilty of an illegal act. There was no sufficient cause for the whipping. The offence was very slight, and entirely unintentional. It was the first violation of the rules on the part of the little boy; he was a new scholar, that being his second day in the school, and his apology, repentance, and promise to 'do so no more' ought to have saved him from the lash. The chastisement, under these

circumstances, was not only cruel, but an unauthorized exercise of power. Cases like this are calculated to produce the deeds of violence against teachers which so often occur on the part of the parents and brothers of students.

"The law has very properly guarded the rights of both parties, where this and similar relations exist. The authority given to the teacher must not be abused, but exercised with discretion and moderation. He must necessarily have the power to enforce obedience to his rules, and even to use the rod when necessary, but not wantonly and without cause. Nor must his chastisement be cruel or excessive, but reasonably proportioned to the offence, and in the bounds of moderation. It is of the first importance that the authority of the schoolmaster should be firmly maintained, but still it must be kept within proper limits. The scholar being helpless, and in the power of his teacher, that power should be restrained, and not allowed to be wantonly abused with impunity. Where this is done the courts must afford the proper redress, and prevent the temptation from being presented to parents and relations to take vengeance into their own hands. The government of a school should be patriarchal rather than despotic. If it be a monarchy, it should be a limited one, and not absolute."

Vermont, 1859.—*Lander v. Seaver*, 32 Vt. 114.

In the Vermont case of *Lander v. Seaver*, where a boy was punished for calling his teacher names out of school (see page 96), the court, in relation to corporal punishment, approved the law as expressed in the case of *Hathaway v. Rice*, 19 Vt. 102 (see page 109), and in 4 Gray, 36 (see page 116).

From opinion: “. . . The law, as we deem it to exist, is this: A schoolmaster has the right to inflict reasonable corporal punishment. He must exercise reasonable judgment and discretion in determining when to punish, and to what extent. In determining upon what is a reasonable punishment various considerations must be regarded—the nature of the offence, the apparent motive and disposition of the offender, the influence of his example and conduct upon others, and the sex, age, size, and strength of pupil to be punished. Among reasonable persons much difference prevails as to the circumstances which will justify the infliction of punishment, and the extent to which it may properly be administered. On account of this difference of opinion, and the difficulty which exists in determining what is a reasonable punishment, and the advantage which the master has by being on the spot to know all the circumstances—the manner, looks, tones, gestures, and language of the offender (which are not always easily described)

—and thus to form a correct opinion as to the necessity and extent of the punishment, considerable allowance should be made to the teacher by way of protecting him in the exercise of his discretion. Especially should he have this indulgence when he appears to have acted from good motives and not from anger or malice. Hence the teacher is not to be held liable on the ground of excess of punishment unless the punishment is *clearly* excessive, and would be so held in the general judgment of reasonable men. If the punishment be thus *clearly* excessive, then the master should be held liable for such excess, though he acted from good motives in inflicting the punishment, and in his own judgment considered it necessary and not excessive. But if there is any reasonable doubt whether the punishment was excessive, the master should have the benefit of the doubt.”

Iowa, 1878.—*State v. Mizner*, 50 Iowa, 152.

In the Iowa case hereinbefore cited, page 50 (50 Iowa, 152), where a scholar was punished for not reciting in algebra, the court expressed an opinion upon the subject of corporal punishment. In the lower court the jury received the following instruction: “In the absence of all proof the law presumes that a father or school-teacher punishes a child of the father or the pupil of the teacher for a reasonable cause and in a moderate and reasonable man-

ner. But this presumption, like all other legal presumptions, may be rebutted by the proof." This instruction was sustained by the Supreme Court.

From opinion: "It is urged this instruction is erroneous, for the reason that the teacher is not liable because of the punishment inflicted, but only in the event that it was excessive, and the evidence fails to show such was the case.

"Forty years ago it was held, that 'when the correction administered is not in itself immoderate, and therefore beyond the authority of the teacher, its legality or illegality must depend entirely, we think, on the *quo animo* with which it is administered. Within the sphere of his authority the master is the judge when correction is required, and of the degree of correction; and, like all others intrusted with a discretion, he cannot be made penally responsible for error of judgment, but only for wickedness of purpose.' (*State v. Pendergrass*, 2 Dev. & Batt. 355.)

"Twenty years later an instruction was refused which announced the rule that a teacher was not amenable criminally unless he inflicted the punishment with a bad intent, from vindictive feelings, and an instruction given which recognized the right to chastise a scholar by whipping, and the proof was sufficient to justify the instrument used as being a proper one, but that in 'inflicting corporal punishment the teacher must exercise reasonable judgment

and discretion as to the mode and severity of the punishment by the nature of the offence, and by the age, size, and apparent power of endurance of the pupil.'

"As to this instruction it was said: 'The instructions given tended to justify the defendant in punishing his pupils with greater severity than is consistent with a just and humane exercise of the authority conferred on him by law. To say the least, they were sufficiently favorable to the defendant.' (*Commonwealth v. Randall*, 4 Gray, 36.)

"We concur with the Supreme Court of Massachusetts in the case last cited, and further than this we have no occasion to go in the present case. But if the rule of the first case cited is the correct one, then we have no hesitation in saying there was no error in the instruction of the court, because the punishment was immoderate and excessive, if the testimony of the witnesses for the state is true, and this was a question for the jury. Any punishment with a rod which leaves marks or welts on the person of the pupil for two months afterward, or much less time, is immoderate and excessive, and the court would have been justified in so instructing the jury."

Indiana, 1879.—*Dannenhoffer v. State*, 69 Ind. 295.

A Catholic priest, having charge of a Catholic school in Indiana, punished a boy under the follow-

ing circumstances: He, with others, attended the funeral of a Protestant boy as pall-bearers. When they went to school the next day they were required by the lady teacher in charge, subordinate to the priest, to give an excuse for their absence from school, but they refused to give any. She then gave the boys a note directed to the priest, but they ran home and did not deliver the note. The next day the priest whipped them for their disobedience of the order of the teacher in not delivering the note. The priest was sustained by the Supreme Court, and the case of *Cooper v. McJunkin*, 4 Ind. 291, was cited and approved.*

* Dannenhoffer was again indicted for whipping another boy under the same circumstances, and in the court below was found guilty and sentenced to pay a fine of five dollars. The case came before the Supreme Court in 1881. (*Dannenhoffer v. State*, 79 Ind. 75.) On the trial below the defendant was asked this question by his counsel: "State whether or not that Tekulve (the person on whom the battery was charged to have been committed) attended the funeral of Clark had anything to do with the punishment administered on that occasion, or if it was any part of the cause."

The counsel for the state objected to this question, and the trial judge ruled it out.

The Supreme Court decided that the question was a proper one, and granted a new trial, saying: "It was important to know whether the defendant punished the boy for going to the funeral, or for other disobedience and insubordination."

Pennsylvania.—*Com. v. Seed*, 5 Penn. L. J. R 78 (reported 1851).

This case arose in one of the courts of Philadelphia. A child had played truant. She was sent by her parent with an elder sister to school. When the door was reached she refused to go in, showing great violence of temper. An assistant teacher endeavored to persuade her to enter, but without effect. The principal then appeared and took her into the room, where the violence continued, manifested by jumping and screaming. The teacher talked mildly to the child, and ordered obedience, and finally threatened a whipping, but all to no purpose. She then whipped her with a small rattan. After a few blows she reasoned with the child, but the child continuing to be obstinate the whipping was continued until the child yielded. The teacher was complained of for assault and battery.

From judge's opinion: "What is there in all this which shows malice or cruelty on the part of the teacher? What is there in the language of the law which shows a 'wicked motive'? I can see nothing. The teacher required obedience to the rules of the school and it was refused. That punishment is used which she thinks is best calculated to produce submission, and in the manner and form common in all schools. This authority the law has delegated to her, and for the exercise of it, although we might differ in opinion

as to the manner in which it was done, at least the court will not punish for or correct an error of judgment. But from the facts disclosed I do not think there was even an error in that particular. She entered upon the performance of her duty with moderation and firmness as well as a determination to produce submission, which she pursued till it was accomplished, by the best means which her judgment dictated. In this we think she was right. Had she done less, the directors of the school might with propriety have thought she was culpable; and for these things the law does not hold her responsible.

“But it has been said there were marks of violence on the child the next day, caused by blows from the rattan. But this is but a slight circumstance to show the motive. It is much greater evidence of the obstinacy and perseverance of the child. The instrument employed was a small, smooth rattan, certainly a moderation in the instrument used, in these days of improvement in education, and in most that is useful, or which adds to the comfort of man. For many of us can well recollect when the birch or hickory stick, with some rather sharp knots thereon, was the instrument for flagellation, and our parents did not complain.

“To hold that under such circumstances a teacher should be liable to a criminal prosecution would be subversive of all government and order in our schools. Without a firm controlling power is exercised by

school-teachers, in exacting obedience, submission, united with quiet and good order in the schools, the public money is worse than wasted. Obedience to parental authority should be taught in the family, and must be maintained in our schools, or we shall have no obedience in the laws of our government. . . .

"The character and interest of the teacher, combined with the refinement which education gives to the human mind, in softening the heart, like parental love, is generally found a sufficient protection for the children. But, if these fail, the law affords ample protection against cruelty and oppression, while it is a shield to those who, in their sphere, have, as in this case, only done their duty."

For cases where the court held that punishing a pupil for refusing to study certain branches was unjustifiable, see p. 34 (35 Wis. 59) and pp. 50, 122 (50 Iowa, 152).

The following is the law of New Jersey :

"No teacher shall be permitted to inflict corporal punishment upon any child in any school in this state." (Rev. Stat. 1877, p. 1087.)

The following extract is from the New York Penal Code: "The use, or attempt, or offer to use force or violence upon or towards the person of another is not unlawful in the following cases, . . . when committed by a parent or the authorized agent

of any parent, or by any guardian, master, or teacher, in the exercise of a lawful authority to restrain or correct his child, ward, apprentice, or scholar, and the force or violence used is reasonable in manner and moderate in degree." (Rev. Stat. vol. 4, Penal Code, c. 5, § 223.)

NOTE.—An examination of the decisions shows that the courts, with entire unanimity, affirm the right of teachers to administer bodily punishment to compel obedience to their lawful commands; but that upon the measure or degree of the punishment and the liability of the teacher for abuse of the right the courts differ.

The decisions may be arranged in two classes, respectively represented by *State v. Pendergrass*, 2 Dev. & Batt, 365 (N. C. 1837) [p. 105]; and *Com. v. Randall*, 4 Gray, 36 (Mass. 1855) [p. 116]. The first-named case decides that the teacher acts judicially in determining the necessity and extent of punishment, and is not liable unless he produces lasting injury to body or health, or punishes with malice, bad passion, or wickedness of purpose. The second case is to the effect that the teacher must exercise reasonable judgment, and if he goes beyond the limit of moderate castigation and uses any unreasonable and disproportionate violence or force, either in mode or degree of correction, he is liable in a criminal prosecution.

The rule established by the first case is supported by *Com. v. Seed*, 5 Pa. L. J. 78 (p. 126), and is cited and approved in four subsequent cases in North Carolina—*State v. Stalcup*, 2 Ired. 50; *State v. Black*, Winst. 266;

State v. Rhodes, Phil. 453; and *State v. Alford*, 68 N. C. 322 (1873), in which Judge Gaston, by whom the opinion was given in the *Pendergrass* case, is spoken of as "humane a judge as ever presided in a court."

The rule laid down in the Massachusetts case, though in substance first announced by the Supreme Court of Indiana in *Cooper v. McJunkin*, 4 Ind. 291 (1853), is supported by *Gardner v. State*, 4 Ind. 633 (p. 115); *Anderson v. State*, 3 Head. 455 (Tenn. 1859) [p. 119]; *Lander v. Seaver*, 32 Vt. 114 (p. 96); *State v. Mizner*, 50 Iowa, 152 (p. 50); *Dannenhoffer v. State*, 69 Ind. 295 (p. 124).

It is to be presumed, in the absence of evidence to the contrary, that the teacher punishes in the exercise of an honest judgment, and not maliciously; and that the punishment is not excessive. (*Anderson v. State*, 3 Head. 455, Tenn.; *Lander v. Seaver*, 32 Vt. 114; *State v. Mizner*, 50 Iowa, 152.)

RULES NEED NOT BE RECORDED; AND RULES MADE BY TEACHER OR PART OF BOARD, SUBSEQUENTLY RATIFIED BY FULL BOARD, ARE BINDING.

Above points decided in *Hodgkins v. Rockport*, 105 Mass. 475, ante, p. 76. The court said, "Much of the power of the committee, as to the preservation of order and the maintenance of discipline, must necessarily be delegated to its different members and the teachers, and must be exercised without any vote or record."

And in *Russell v. Lynnfield*, 116 Mass. 366, ante, p. 9, the above case was cited, and the court said:

"The exclusion which the plaintiff complains of in this case was by the school-teacher, acting under the direction of one member of the school committee. It is contended to have been unlawful solely because the rule in question had not been formally established or confirmed by vote of the school committee, duly entered upon their records. The school committee are required to have the general charge and superintendence of all the public schools in town, and to keep a record of their votes, orders, and proceedings. (Gen. Stat. c. 38, § 16, 22.) But this does not imply that all rules and orders required for the discipline and good conduct of the schools shall be matter of record with the committee, or that every act in regard to the management of each school in these respects should be authorized or confirmed by formal vote. It would be practically impossible sufficiently to provide for such matters by a system of rules, however carefully prepared and promulgated. Much must necessarily be left to the individual members of the committee and to the teachers of the several schools."

In *State v. Burton*, 45 Wis. 150, ante, p. 78, the court said:

". . . In the school, as in the family, there exist on the part of the pupil the obligations of obedience to lawful commands, subordination, civil deportment, respect for the rights of other pupils, and fidelity to duty. These obligations are inherent, in

any proper school system, and constitute, so to speak, the common law of the school. Every pupil is presumed to know this law, and is subject to it, whether it has or has not been re-enacted by the district board in the form of written rules and regulations. Indeed, it would seem impossible to frame rules which would cover all cases of insubordination and all acts of vicious tendency which the teacher is liable to encounter daily and hourly."

The above expression of the Wisconsin court was quoted and approved by the Supreme Court of Indiana in 69 Ind. 295, ante, p. 124.

See *Kidder v. Chellis*, p. 52, for case where teacher was sustained in enforcing a rule made by him in relation to declamations, and not ratified by the school committee.

NOTE.—In California: "All pupils must comply with the regulations, pursue the required course of study, and submit to the authority of the teachers of such schools."

In Kentucky: "All pupils who may be admitted to common schools shall comply with the regulations established in pursuance of law for the government of such schools."

The law of Missouri provides "rules to take effect when a copy of the same, duly signed by a majority of the board, is deposited with the district clerk, whose duty it shall be to transmit forthwith a copy of the same to the teachers employed in the schools."

In New Jersey: "The pupils of the public schools

shall comply with the regulations established in pursuance of law for the government of such schools, . . . and shall submit to the authority of the teacher." (See p. 164.)

In New Hampshire: Rules "being recorded by the town clerk and a copy thereof given to the teachers, and read in the schools, shall be binding upon scholars and teachers." (See p. 151.)

The law of Rhode Island provides that the rules and regulations shall be put up in each school-house. (See p. 154.)

In Wisconsin: Rules shall take effect "when a copy of the same, signed by a majority of the board, shall be filed with the clerk." (See p. 158.)

PERSONS OVER SCHOOL AGE, OR OVER TWENTY-ONE YEARS OF AGE, WHO ATTEND SCHOOL ARE SUBJECT TO ALL RULES OF THE SCHOOL.

This point was decided in *Stevens v. Fassett, Jr.*, 27 Me. 266, ante, p. 110.

From opinion: "It is not necessary to settle the question whether one living within the district, and not being between the ages of four and twenty-one years, can with propriety require the instructions of town school. If such does present himself as a pupil, is received and instructed by the master, he cannot claim the privilege, and receive it, and at the same time be subject to none of the duties incident to a scholar. If disobedient, he is not exempt from liability to punishment so long as

nan v. Tappenden, 1 East. 555, declares no action will lie against individuals for acts erroneously done by them in their corporate capacity, from which detriment may happen to another, without proof of malice." *McCormick v. Burt*, 95 Ill. 263.

A later decision in Illinois affirms the above. *Churchill v. Fewkes*, 1883 (see p. 22). To same point see *Dritt v. Snodgrass*, 66 Mo. 286, citing *Donahoe v. Richards*, 38 Me. 391; *Spear v. Cummings*, 23 Pick. 224; *Stephenson v. Hall*, 14 Barb. 222. See also *Stewart v. Southard*, 17 Ohio, 402, but see 21 Ohio St. R. 666; *Weaver v. Devendorf*, 3 Denio, 117; *Downer v. Lent*, 6 Cal. 94; *Mills v. Dean*, 32 N. Y. 489; *Hines v. Lockport*, 50 N. Y. 236; 49 Barb. 455; 49 N. H. 199; 37 Conn. 365; 48 Mo. 253; 1 Denio, 599; 3 How. 87.

There is a wide difference of authority upon the question whether or not teachers are included in the class of officers vested with judicial powers, and not liable for errors of judgment. As this question is involved in the decisions in relation to corporal punishment, the reader is referred to them and the note following, on pages 105-130.

AUTHORITY OF TEACHER IN CHARGE OF SCHOOL,
WITHOUT HOLDING CERTIFICATE OF APPOINTMENT.

The power and authority of a teacher who has not a certificate of appointment, where such is required by statute, has been much disputed. The

subject was thus treated by Horace Mann, an eminent educational authority, 10th Rep. Mass. Board of Education (1847), p. 169, 170: "An important question has been agitated, whether a person illegally admitted, or smuggled into a school without a certificate, can legally exercise any of the prerogatives of a teacher; whether, for instance, if he should punish or chastise a refractory or vicious scholar, so much only as, under other circumstances, would be held justifiable, he could defend himself from fine or damages in a prosecution or action for assault and battery, instituted against him in a court of law. . . .

"On the one hand, it is maintained that a teacher without a certificate can no more justify a punishment inflicted by him on a scholar than a sheriff, without a commission, can justify an arrest of person, or a seizure of chattels; nor more than a constable or collector can justify the taking of property for non-payment of taxes, when he has received no warrant from the collector to collect them; no more than a judge who, without a commission from the executive, has usurped the bench, can, with impunity, pronounce sentence of imprisonment or of death against an offender arraigned at his bar. . . .

"The pretended teacher is not a teacher. It would be of the worst possible tendency to allow any man to derive lawful authority from the commission of an unlawful act. Public policy requires that a teacher who has obtruded himself into a school without

the necessary credentials should be peremptorily debarred from pleading his own misconduct in justification of an act which, if committed out of school, would doubtless be unlawful. . . .

"Such is the course of argument usually presented against a teacher without a certificate, in regard to his right to punish.

"On the other hand, some incline to the opinion that a teacher without a certificate, though not *in law* a teacher, yet is so *in fact*; and, while the actual relation of teacher and pupil subsists, all the legal powers of a teacher attach to this relation, and may therefore be exercised by them. If a school kept by a teacher without a certificate is not a public school, then it must be a private school; and the teacher of a private school has as clear a right to inflict punishment, in exigencies as require it, as any other teacher, or as any parent."

The last view of the matter presented by Mr. Mann is sustained by such decisions as have been published.

Vermont, 1855.—*State v. Williams*, 27 Vt. 755.

Peter Bean was a prudential committee, and Miss Emily Culver was a teacher in his district. One Henry Williams, a boy sixteen or seventeen years old, refused to obey the lawful and proper commands of the teacher, when, and in consequence of such misconduct, he was expelled from school and

forbidden to attend further until he would make suitable and proper acknowledgment of such misbehavior. He again went to the school, and, upon being called upon by the teacher, refused to make acknowledgment or leave the school, whereupon the teacher sent for Peter Bean, the committee, who went to the school-house and requested the said Henry to make acknowledgment to the teacher or leave the school, which he refused to do. Bean then attempted to remove him, when the defendant, Spencer Williams, interfered and resisted.

The defendant was found guilty, and the question was raised that the existence of the school district and the office of Bean had not been shown. It was decided not necessary.

From opinion: "But if we were to assume that there was no such school district, and that no evidence was introduced showing that Mr. Bean was one of the prudential committee, we do not see that it would necessarily affect this prosecution. The fact that there was a school, that Miss Culver was its teacher, that one of the pupils was requested to leave for insubordination and misconduct, and that he refused to do so, are not disputed. Regarding the school, therefore, as a private school, and subject to the discipline and government of Miss Culver as its teacher, she had a right, for those reasons, to request Mr. Bean to assist her in enforcing her discipline and government; and in so doing Mr. Bean would

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be justified as her agent and servant. Under such circumstances the respondent cannot be justified in the assault and battery of which the jury have found him guilty."

For a case directly in point see *Kidder v. Chellis*, ante, p. 52.

APPENDIX A.

STATE LAWS IN RELATION TO POWERS OF SCHOOL OFFICERS.

In Alabama: Superintendent of state education "shall exercise a general supervision over all educational interests of the state. . . . He shall prepare and have printed . . . all laws, rules, and regulations pertaining to the public-school system of the state, and cause the same to be distributed to the county superintendents of education and other officers connected with the school system, for the information of those interested in the educational interests of the state." County superintendent "shall have general supervision of the public schools of the county" and "general superintendence." Township superintendent "shall have immediate supervision of the public schools in his township."

In Arkansas: State superintendent "shall be charged with the general superintendence of the business relating to the free common schools." School directors "shall have charge of the school affairs, and of the school educational interests of their districts."

In California: State board of education "to adopt rules and regulations, not inconsistent with the laws of this state, for its own government, and for the gov-

ernment of the public schools." Superintendent of public instruction "to superintend the public schools in the state," and to have the school laws printed, together with the rules and regulations, and supply the same to school officers and teachers. Trustees of school districts and city boards of education shall "prescribe and enforce rules not inconsistent with law, or those prescribed by the state board of education, for their own government and the government of schools."

In Colorado: "The state board of education shall have power to adopt any rules and regulations not inconsistent with law, for its own government and for the government of the public schools." State superintendent "shall have general supervision of the public schools of the state." County superintendent "to exercise a careful supervision over the schools of his county." District directors "shall have power to make such by-laws for their own government and for the government of the public schools under their charge as they may deem expedient, not inconsistent with the provisions of law or the instructions of the superintendent of public instruction," and to "enforce the rules and general regulations of the state superintendent."

In Connecticut: State board of education "shall have general supervision and control of the educational interests of the state." Boards of education in districts "to have the general superintendence of the public schools in the district." Each board of school visitors "shall prescribe rules for the management . . . and discipline of the public schools."

In Delaware: "The school committee of each dis-

strict . . . may make regulations for the government of the school."

In Florida: Superintendent of public instruction "shall have the oversight, charge, and management of all matters pertaining to public schools," and "provide for teachers such printed instructions, regulations, and decisions as he may judge necessary for their use." Board of public instruction "to perform all acts reasonable and necessary for the promotion of the educational interests of the county." School trustees "to take the special charge, inspection, and management of all the schools and school interests over which they have been appointed."

In Georgia: "It shall be the duty of school trustees, herein provided for, to supervise the school operations of the sub-districts."

In Illinois: State superintendent of public instruction "shall have the supervision of all the public and common schools in the state," and "shall make such rules and regulations as may be necessary and expedient" to carry out the school act. In districts of two thousand inhabitants the board of directors "to prescribe the method and course of discipline and instruction in the several schools, and to see that they are maintained and pursued in a proper manner," and "to establish all such by-laws, rules, and regulations for the government and for the establishment and maintenance of a proper and uniform system of discipline in the several schools as may, in their opinion, be necessary." Boards of education in cities of one hundred thousand inhabitants "shall have charge and control of the public schools in such cities," "and

generally to have and possess all the rights, powers, and authority required for the proper management of schools, with power to enact such ordinances as may be necessary or deemed expedient for such purpose," and the same power is given to establish by-laws, rules, and regulations as directors in last-named districts have. District directors "shall adopt and enforce all necessary rules and regulations for the management and government of the schools."

In Indiana: The county superintendent "shall have the general superintendence of the schools of his county." School trustees "shall take charge of the educational affairs of their respective townships, towns, and cities." Trustees of graded schools "shall have the care and management" of such. School commissioners in cities of thirty thousand inhabitants or more "to establish and enforce regulations . . . for the government and discipline of such schools."

In Iowa: Superintendent of public instruction "shall be charged with the general supervision of . . . all the common schools of the state." Board of directors shall "aid the teachers in establishing and enforcing the rules for the government of the schools." Principal of county high-school, with the approval of trustees, "shall make such rules and regulations as he deems proper in regard to the . . . conduct and government of the pupils under his charge."

In Kentucky: Superintendent of public instruction and two professional teachers, who shall be members of the board of education, "shall constitute a standing committee who shall prepare rules, by-laws, and regulations for the common schools of the state, which

shall be adopted and enforced under the authority and direction of the county school commissioners, in all cases where the district school trustees shall fail to enforce such." Each school district "shall be under the control of one trustee." And such district trustee "shall visit the school" and "see that the regulations for its government are complied with."

In Kansas: County superintendent to visit schools, "correcting any deficiency that may exist in the government of the school, the classification of the pupils, . . . to make such suggestions, in private, to the teachers as he shall deem proper and necessary to the welfare of the school." Boards of education in cities "have power to make all necessary rules for the government of the schools of said city under its charge and control," and "to exercise the sole control over the public schools and school property of the city." District directors "shall confer with the teacher in regard to condition and management; and make such suggestions as in their view would promote the interest and efficiency of the school, and the progress and good order of the pupils."

In Louisiana: The free public schools "shall be under the control of a state board of education;" which has power to "make all needful rules and regulations for the government" thereof. Superintendent of public instruction "shall be charged with the general supervision of all parish boards of education, and of all the common, high, and normal schools of the state." Parish board of directors "to prescribe rules for the government of the free public schools within their

jurisdiction not inconsistent with this law and the rules prescribed by the state board of education."

In Maine: State superintendent "to exercise a general supervision of all the public schools of the state." School committee to "examine the schools, and inquire into the regulations and discipline thereof, and the proficiency of the scholars." Supervisors, when chosen, to have power of school committee.

In Maryland: "The state board of education . . . shall enact by-laws for the administration of the public-school system, not at variance with this act." County school commissioners "shall have the general supervision and control of all schools in their respective counties." School trustees "shall exercise a general supervision over their respective schools, and visit them frequently."

In Massachusetts: School committees "shall have the general charge and superintendence of all the public schools." Where superintendents are appointed by vote of city or town they, "under the direction and control of said committee, shall have the care and supervision of the public schools."

In Michigan: "The superintendent of public instruction shall have general supervision of public instruction." He shall prepare and send "such instructions, relating to the organization and government of such schools, . . . as he may deem advisable, to the several officers intrusted with their care and management." District board "shall have the general care of the school, and shall make and enforce suitable rules and regulations for its government and management."

In Minnesota: Board of trustees "shall have the

general charge of the interests of schools and school-houses in their districts." Boards of education in independent districts "shall have power to superintend and manage, in all respects, the schools of said district, . . . adopt, alter, modify, and repeal rules for their organization, government, and instruction."

In Mississippi: Board of education "shall regulate all matters arising in the practical administration of the free-school system which are not otherwise provided for." State superintendent of public instruction has "general supervision" of the common schools. School trustees "to look specially after the local interests of their schools."

In Missouri: Board of directors "shall have the power to make all needful rules and regulations for the organization, grading, and government of the schools in their district. Said rules to take effect when a copy of the same, duly signed by a majority of the board, is deposited with the district clerk, whose duty it shall be to transmit forthwith a copy of the same to the teachers employed in the schools; said rules may be amended or repealed in like manner. . . . It shall be the duty of the board to visit the schools under their care, examine into their condition and the progress of the pupils, advise and consult with the teachers, and to exercise such supervision as will best promote the best interests of the schools." Boards in towns and cities shall perform same duties as other boards.

In Nebraska: State superintendent to visit schools "and witness and advise with teachers and school officers upon the manner in which they are conducted."

County superintendent "to examine carefully into the discipline and modes of instruction . . . and to consult with teachers and district boards as to the course of study to be pursued, and for the improvement of the instruction and discipline of the school." District board "shall have the general care of the school," and "make such rules and regulations as they may think necessary for the government and health of the scholars." Trustees of high-school districts shall have power "to make such rules and regulations as they may think needful for the government of the schools." Schools in cities and towns "shall be under the direction and control" of their boards of education.

In Nevada: Superintendent of public instruction shall cause "such instructions as he shall deem necessary and proper for the organization and government of schools to be transmitted to the local school officers, who shall be governed in accordance therewith." County superintendent "to exercise a general supervision over the interests of the public schools in his county."

In New Hampshire: "Any town may adopt a by-law providing for the choice of a school committee of such number, chosen in such manner, for such terms, with such title, and such powers relating to schools as they may think proper." Town board of education "shall have the control and management of the schools of the district . . . and generally shall have and enjoy all the power and authority, and perform all the duties pertaining to the offices of prudential and school committees." School committees may prescribe suitable rules and regulations for the

attendance upon, management . . . and discipline of the schools, whenever they deem the same necessary; and the same being recorded by the town clerk, and a copy thereof given to the teachers, and read in the schools, shall be binding upon scholars and teachers." High-school committee "shall have the entire charge thereof . . . and generally shall have the same powers and perform the same duties, in regard to such high-schools, as school committees in relation to common schools." Towns and cities may provide for superintendent "who shall be vested with such of the powers and charged with such of the duties of the school committee and of the prudential committee . . . as may be therein provided."

In New Jersey: "The general supervision and control of public instruction . . . shall be vested in a state board of education." Said board "shall have power . . . to prescribe and cause to be enforced all rules and regulations necessary for carrying into effect the school laws." The state superintendent "shall have the supervision of all the schools of the state." County superintendent, with other tasks, "to discharge other duties of general supervision and superintendence over the public schools of the county, in accordance with the regulations prescribed from time to time by the state board of education." School trustees shall have power "to make and enforce rules and regulations, not in conflict with general regulations of the state board of education, for the government of schools, pupils, and teachers," and "to enforce the regulations prescribed by the state board of education."

In New York: State superintendent of public instruction shall visit the common schools of the state "and inquire into their course of instruction, management, and discipline, and advise and encourage the pupils, teachers, and officers thereof. . . . And cause such information and instructions as he shall deem conducive to the proper organization and government of the common schools, and the due execution of their duties by school officers, to be transmitted to the officers and persons intrusted with the execution of the same." School commissioners "to recommend to trustees and teachers the proper . . . discipline and management of the schools." Board of education of union schools "shall have power to establish such rules and regulations concerning the order and discipline of the school or schools, in the several departments thereof, as they may deem necessary to secure the best educational results." And "to have in all respects the superintendence, management, and control of said union free schools."

In New York City: Board of education to "have full control of the public schools and the public-school system of the city," "subject only to the general statutes of the state upon education." Ward trustees, "under such rules and regulations, and subject to such limitations as the board of education may prescribe, to conduct and manage the said schools." City superintendent "to advise and consult with the trustees in relation to the proper studies, discipline, and conduct of the schools, the course of instruction to be used."

In North Carolina: Superintendent of public in-

struction "shall direct the operation of the system of public schools and enforce the laws and regulations in relation thereto." County board of education "shall be charged with the general management of the public schools in their respective counties . . . and shall see that the school law is enforced." County superintendent "shall advise with teachers as to the best methods of instruction and government; . . . he shall have authority to correct abuses."

In Ohio : District board "shall make such rules and regulations as it may deem expedient and necessary for its government, and the government of its appointees and the pupils," and "shall have the management and control of the public schools of the district."

In Oregon : State board of education shall have power "to prescribe a series of rules for the general government of the public schools that shall secure regularity of attendance, prevent truancy, secure and promote the true interests of the schools." Superintendent of public instruction "to exercise a general superintendence of the county and district school officers and the public schools of the state." School directors "to employ teachers and assist them in the government of the school." Board of directors in towns of ten thousand inhabitants to "make rules and regulations for the government of said district."

In Pennsylvania : Board of directors of districts, and controllers in cities and boroughs, "shall exercise a general supervision over the schools of their respective districts."

In Rhode Island : State board of education has "general supervision and control of the public schools

"such other officers as the legislature direct." District board "shall have power to make all needful rules for the government of the schools established in the district, such rules to take effect when a copy of the same, signed by a majority of the board, shall be filed with the clerk." Directors of township schools "shall have, in all respects, the supervision and management of all the schools, with full power to adopt, enforce, modify, and repeal, from time to time, all rules and regulations not inconsistent with the laws of this state, necessary for their organization, gradation, and control, and for the instruction given by them in the different branches of education taught therein, and to establish and enforce proper penalties for the violation of such rules."

perintendent, "to have supervision of the public schools in the county." School directors "to explain and enforce the school laws and regulations, and themselves to observe them, . . . to visit the public schools within the district from time to time, and see that they are conducted according to law and with efficiency." Where cities and towns vote to levy and collect school-tax the mayor and board of aldermen "shall have exclusive control and management over the common schools of the city or town."

In Texas: State superintendent "shall advise and consult with the school boards of counties, cities, and towns as to the best methods of conducting the public schools, and shall be empowered to issue instructions and regulations binding for observance on all officers and teachers in all cases where the provisions of the school law may require interpretation in order to carry out the designs expressed therein; also in cases that may arise in which the law has made no provision; and also where necessity requires some rule in order that there may be no hardship to individuals, and no delay or inconveniences in the management of school affairs." If incorporated cities and towns so vote they "may have exclusive control of the public free schools within their limits." The council or board of aldermen of such city or town "are invested with exclusive power to maintain, regulate, control, and govern" the free schools of said town. City council may appoint trustees, who shall have control and supervision of the free public schools. Trustees of school districts and committees shall have "the management and control of the free public schools."

appeal to the county superintendent, whose decision shall be final."

In Colorado: School board "to suspend or expel pupils from school who refuse to obey the rules thereof."

In Connecticut: The committee of every district "shall suspend during pleasure, or expel from the school for the term, all pupils found guilty, on full hearing, of incorrigibly bad conduct."

In Delaware: The school committee of each district may provide regulations "for the expulsion of a scholar for obstinate misbehavior."

In Florida: School trustees "to extend the suspension of, or expulsion from school, of any pupil for gross misconduct, immorality, a disregard of, or persistent opposition to, the authority of the teacher. But such restriction is not to be continued after a manifest reformation, and a sincere determination to do well in future." Teachers "to suspend pupils from school for ten days for gross immorality, misconduct, or persistent violation of the regulations, giving immediate notice to the parent or guardian of the pupil, and to the school trustee of the suspension, and the cause of it."

In Illinois: District directors, directors in cities of two thousand inhabitants, and boards of education in cities of one hundred thousand inhabitants, have power to suspend or expel any pupil who may be guilty of "gross disobedience or misconduct."

In Indiana: Township director "may exclude any refractory pupil. . . . But the exclusion of any pupil from the school for disorderly conduct shall not extend beyond the current term, and may be, in the dis-

cretion of the director, for a shorter period." "The decision of the director in excluding a pupil shall be subject to appeal to the township trustee, whose decision shall be final."

In Iowa: The majority of the board of directors in independent districts, and sub-directors in sub-districts, "shall have power, with the concurrence of the president of the board of directors, to dismiss or suspend any pupil from the school in their district for gross immorality, for a persistent violation of rules of the school, and to readmit them if they deem it proper so to do." Trustees of county high-schools may suspend or expel pupils who do not "conform to and obey the rules of the school."

In Kentucky: School trustees, upon complaint of the teacher, "shall have power to expel a pupil." "Every teacher shall have the power . . . to suspend from school any pupil for good cause, provided such suspension shall be reported, as soon as practicable, to the trustee, by the teacher, and if such action is not sustained by him he may appeal to the commissioner, whose decision of the cause shall be final." "Wilful disobedience and defiance of the authority of the teacher, habitual profanity and vulgarity, or other gross violation of propriety or law, shall constitute a good cause of suspension or expulsion from school."

In Kansas: "The district board may suspend, or authorize the director to suspend, from the privileges of a school, any pupil guilty of immorality, or persistent violation of the regulations of the school, which suspension shall not extend beyond the current quarter of the school. Provided that the pupil suspended

shall have the right to appeal from the decision of said board of directors to the county superintendent, who shall, upon a full investigation of the charges preferred against said pupil, determine as to his guilt or innocence of the offence charged, whose decision shall be final."

In Louisiana: Parish board of directors "to dismiss any pupil from free public schools for gross immorality, or for persistent violation of the regulations of the school."

In Maine: School committee may "expel from a school any obstinately disobedient and disorderly scholar, after a proper investigation of his behavior, if found necessary for the peace and usefulness of the school, and restore him on satisfactory evidence of his repentance and amendment."

In Maryland: District school trustees "shall have power to suspend and expel pupils for cause. Provided that an appeal shall lie to the board of county school commissioners, whose decision shall be final."

In Massachusetts: "Every member of a school committee under whose directions a child is excluded from a public school, and every teacher of such school from which a child is excluded, shall, on application of a parent or guardian of such child, state in writing the grounds and reason for the exclusion."

"A child unlawfully excluded from a public school may recover damages therefor in an action of tort, to be brought in the name of such child by his guardian or next friend, against the city or town by which such school is supported."

In Michigan: District board "may authorize or order

the suspension or expulsion from the school, whenever in its judgment the interests of the school demand it, of any pupil guilty of gross misdemeanor or persistent disobedience."

In Minnesota: Boards of trustees and boards of education "may suspend or expel pupils for insubordination, immorality, or infectious disease." Boards of education in independent districts "shall have power . . . to adopt, alter, modify, and repeal rules . . . for suspension, expulsion, and transfer" of pupils. "If any scholar is suspended or expelled from any such school without sufficient cause, or on account of color, social position, or nationality, the board by whose direction the offence was committed shall forfeit and pay a fine of fifty dollars for each offence."

In Missouri: Board of directors have "power to suspend or expel a pupil whenever, upon due examination, they become satisfied that the interests of the school demand such expulsion."

In Nebraska: District board "may authorize or order the suspension or expulsion from school, whenever in their judgment the interests of the school demand it, of any pupil guilty of gross misdemeanors or persistent disobedience, but such expulsion shall not extend beyond the close of the term."

In Nevada: School trustees "shall have power to suspend or expel from any public school within their district, with the advice of the teacher, any pupil who will not submit to the reasonable and ordinary rules of order and discipline therein."

In New Hampshire: "Any scholar may be dismissed from school by the school committee for gross mis-

conduct, or for neglect, or refusal to conform to the reasonable rules of the school, and shall have no right to attend the school until restored by the school committee. . . . If any scholar, after notice, shall attend or visit a school which he has no right to attend, or shall interrupt or disturb the same, he shall be fined," etc.

In New Jersey: School trustees "shall have power . . . to suspend or expel pupils from school." Teachers "shall have power . . . to suspend from school any pupil for good cause, provided that such suspension shall be reported to the trustees as soon as practicable, and if such action is not sustained by them the teacher may appeal to the county superintendent, whose decision shall be final." Pupils "shall submit to the authority of the teacher. Continued and wilful disobedience, or open defiance of the authority of the teacher, the use of habitual profanity or obscene language, shall constitute good cause for suspension or expulsion from school." (Pupils liable to suspension for injury to school property, see p. 72.)

In North Carolina: "If any pupil should wilfully and persistently violate the rules of school, such pupil may be dismissed by the teacher for the current term."

In Ohio: "No pupil shall be suspended from school by a superintendent or teacher, except for such time as may be necessary to convene the board of education of the district, or the directors of the sub-district, and no pupil shall be expelled except by a vote of two thirds of such board of directors, and not until the parent or guardian of the offending pupil has

been notified of the proposed expulsion, and permitted to be heard against the same, and no scholar shall be suspended or expelled from any school beyond the current term thereof."

In Pennsylvania: Boards of directors in districts and controllers in cities and boroughs "may suspend or expel from school all pupils found guilty, on full examination and hearing, of refractory or incorrigibly bad conduct."

In Rhode Island: "The school committee may suspend during pleasure all pupils found guilty of incorrigibly bad conduct, or of violation of the school regulations."

In South Carolina: School trustees "to suspend or dismiss pupils when the prosperity and efficiency of the schools make it necessary."

In Tennessee: School directors "to suspend or dismiss pupils when the prosperity or efficiency of the school makes it necessary." Any teacher may, "for sufficient cause, suspend pupils from attendance on the school until the case is decided by the board of school directors, which shall be with as little delay as possible."

In Virginia: School trustees "to suspend or dismiss pupils when the prosperity and efficiency of the schools make it necessary." Teachers may, "for sufficient cause, suspend pupils from attendance on the school until the case is decided by the board of school trustees, which shall be with as little delay as possible." "Persons suffering from contagious diseases shall be excluded." A city superintendent "may suspend or dismiss pupils from the public schools provided that

the city school board shall have power to reverse his action in the premises."

In West Virginia: School trustees "may suspend or expel any scholar found guilty of disorderly, refractory, indecent, or immoral conduct, and may refuse to admit such scholar again to the school until satisfied that he will properly conduct himself thereafter. But trustees shall take no action or proceeding relating to the . . . suspension or expulsion of any scholar from school unless at a meeting of which all the trustees shall have had notice, and when at least two of their number shall be present and concur in such action or proceeding. And their action in such particular shall be subject to the revision and correction of the board of education, upon complaint in writing of a majority of the patrons of the school." Directors of high-schools "may expel or suspend scholars when necessary."

In Wisconsin: District board "shall have power to suspend any pupil from the privileges of the school, for non-compliance with the rules established by them, or by the teachers with their consent; to expel from school any pupil who shall persistently refuse or neglect the rules above mentioned, whenever, upon due examination, they shall become satisfied that the interests of the school shall demand such expulsion."

APPENDIX C.

STATE LAWS IN RELATION TO POWERS OF TEACHERS.

In Alabama: "Every teacher of a public school is required . . . to maintain good order in the school and on the playground," and to "enforce the rules, laws, and regulations relating to public schools."

In California: Teachers "to enforce . . . the rules and regulations prescribed for the schools. . . . To hold pupils to strict account for disorderly conduct on the way to and from school, on the playgrounds, or during recess."

In Florida: Teachers "to require the pupils to observe personal cleanliness, neatness, order, promptness, and gentility of manners, to avoid vulgarity and profanity. . . . To enforce needful restrictions upon the conduct of the pupils in or near the school house and grounds, avoiding, at all times, unnecessary severity and measures that are degrading in their tendency."

In Kentucky: "Teachers shall faithfully enforce in school . . . the regulations prescribed in pursuance of law." Every teacher shall have power and authority to hold every pupil to a strict accountability in school for any disorderly conduct on the way to and from school, or on the playground of the school, or during intermission or recess."

In New Jersey: "Every teacher shall have power to hold every pupil accountable in school for any disorderly conduct on the way to or from school, or on playgrounds of the school, or during recess."

In North Carolina: "It shall be the duty of all teachers of free public schools to maintain good order and discipline in their respective schools, to encourage morality, industry, and neatness in all their pupils." (For teacher's power of supervision see p. 105.)

In Oregon: "A teacher's duty while in charge of a school shall be . . . to maintain order in school, and conduct himself in such a manner, before his school, as to command respect from his pupils."

In Virginia: Teachers "shall require of the pupils cleanliness of person and good behavior during their attendance at the school and on the way thither and back to their homes."

APPENDIX D.

STATE LAWS IN RELATION TO INSULTS TO TEACHERS.

In Alabama: "If any parent, guardian, or other person, from any cause, fancied or real, visit any school and insult any teacher in the presence of his pupils, the person offending by such conduct shall be liable to a fine of twenty-five dollars, and costs, to be paid into the school revenues of the district."

In California: "Any parent, guardian, or other person who shall insult or abuse any teacher in the presence of the school shall be guilty of a misdemeanor, and be liable to a fine of not less than ten nor exceeding one hundred dollars."

In Florida: "Any person who shall, within the school-house or grounds, upbraid or insult any teacher in the presence of the pupils shall, upon conviction, be liable to a fine of twenty-five dollars."

In Indiana: "If any parent, guardian, or other person, from any cause, fancied or real, visits a school with the avowed intention of upbraiding or insulting the teacher in the presence of the school, and shall so upbraid or insult the teacher, such person, for such conduct, shall be liable to a fine of not more than twenty-five dollars, which, when collected, shall go into the general tuition revenue."

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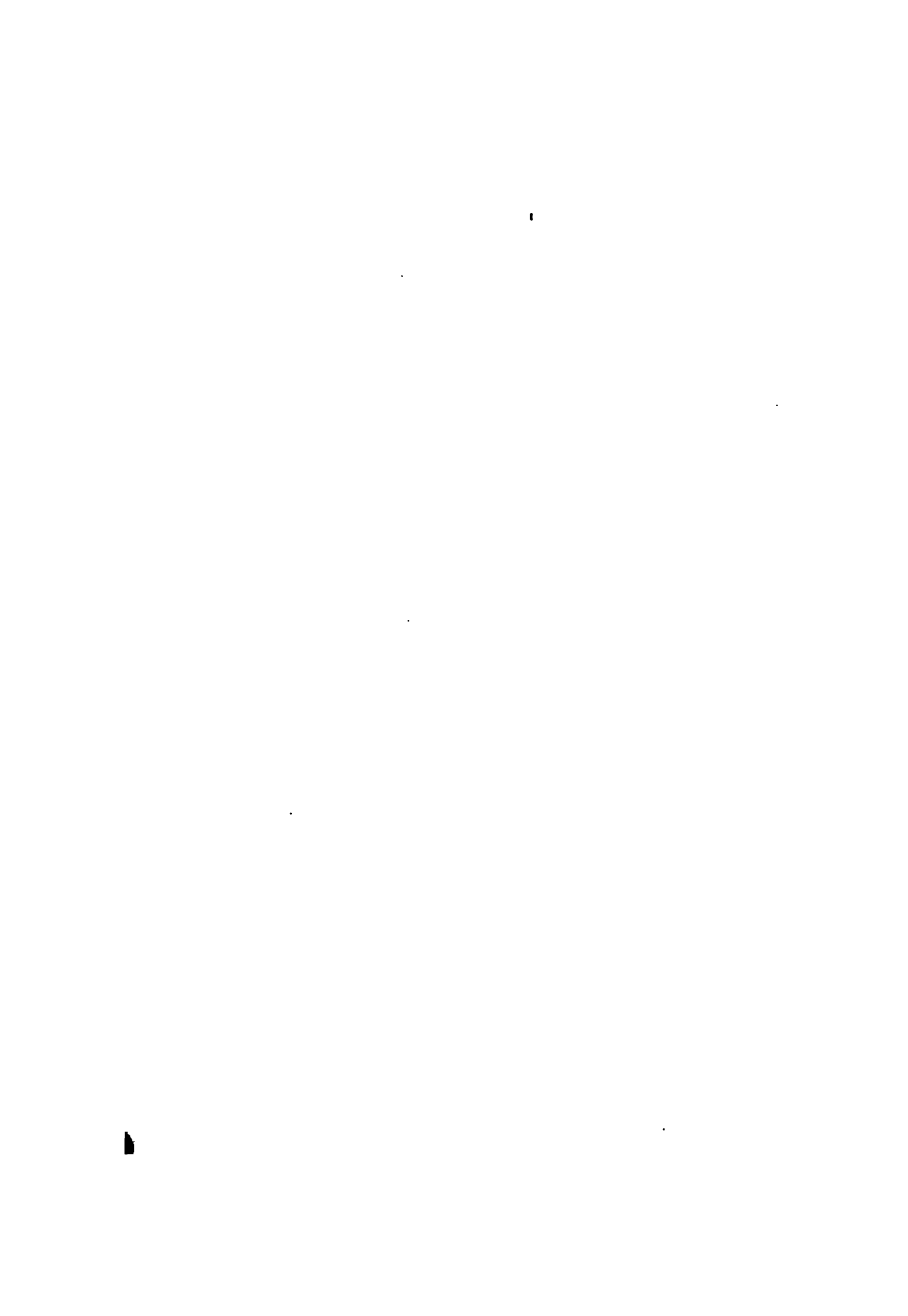
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